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NATIONAL SOVEREIGNTY VERSUS THE RULE OF LAW

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So evident has become the reality of the international community on the one hand, and that of occupational groups on the other, that sociology, which is more concerned with social tendencies than with formal doctrine of any kind, has largely discarded the idea of the sovereign nation-state. But juristic science in considerable measure still clings to it. This is true because the latter is naturally more concerned than sociology with the conservative function of legal formalities. Yet the progressivist influence that sociology has already exerted upon legal concepts is likely to continue; which means that the present sociological insistencies will more nearly correspond with the legal ideas of tomorrow than they do with those of today. Law, in order to maintain its function, must of necessity feed upon the fresh materials of change; to live, it will, in the long run, have to conform to moral and social needs. Morality, which is always at least a step ahead of the law, requires to be followed by the law, for the sake of the life of both, at a distance neither too great nor too short. For the law that follows too closely upon the heels of morality, no less than that which is too far behind, fails to be generally respected and enforced. Legal development is in constant need of being harmonized with all the other strands of history, to the end of the good life. This historic propriety is the ideal not only for the con-

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tent of legislation, but also—though here the steps of change are fewer and longer—in the realm of fundamental juristic concepts such as that of national sovereignty.

I. THE QUESTION OF LEGAL SOVEREIGNTY

The idea of "pluralistic sovereignty" (paradoxical expression!) can hardly be of juristic use. Yet it is the school of Duguit and Krabbe, perhaps—despite the name of "pluralism" that has been attached to it—that is showing the way to a real supremacy of law.

According to Krabbe, law is a normative rule arising from the social sense of right and evaluating the various interests of the community. It includes, for example, the so-called "convention" of the English constitution whereby the cabinet resigns upon an adverse vote in the House of Commons. This rule is as unquestioningly obeyed as anything laid down in the form of a command by the king in Parliament, and its content does not differ in kind from the general content of statute. It is not enforceable in the courts, but the same is true of many rules that have the essence of government, true of legislative stipulations such as are made by the American Congress for the conduct of its own business, true of certain parts of the American Constitution, such as the provision that any fugitive from justice who has fled from one state to another "shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime." These rules, Krabbe would say, are as much law as if they could be enforced in the courts.

Is every norm, however, that arises from a social sense of right to be regarded as law? Some of the pluralists prefer not to distinguish clearly between law in the political (or, as we may say with Duguit, "juridical") sense and law in the wider sense of social regularity.

Duguit, however, attempts to mark off the sphere of political law. "An economic or a moral rule," he says (Would it be clearer in English to say simply a "social rule"?), "becomes

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a juridical norm when into the mass conscience of the individuals composing a given group there has penetrated the notion that the group itself, or that part of it which is in possession of predominant power, can intervene to suppress the violation of this rule." That is to say, a rule of law exists when "the mass of individuals comprising the group understand and admit that the reaction against the violators of the rule can be socially organized." Duguit admits the vagueness, but insists upon the approximate truth, of this definition.

There are those who see fit to scoff at Duguit. For one thing, he insists that law is simply the will of the "predominant element in a given group," whether it expresses a temporary or a comparatively lasting desire. Accordingly, he is compelled to admit, for example, the legality of "lynch law" in some parts of the United States—because it exists. This, of course, is not consistent with the Aristotelian view, widely approved, that there are lawless communities, and that law is tested by reason.

Secondly, Duguit's description of the sanction behind legal rules as consisting of the social reaction against the violators which is produced by the violation of the law is not greatly enlightening. For this sanction, he says, is more often the force of opinion than it is material force; and here he does not show any difference from the sanctions behind such social rules, often obligatory enough, as cannot be said to be of the juridical kind. But this objection we raise not so much in order to protest as in order to be clear. For the various sanctions that enforce the multitude of multi-colored social, including juridical, norms are difficult, if indeed possible, to describe. And when Duguit speaks more concretely he is sufficiently clear. If his analysis of the nature of law is not always convincing, he nevertheless achieves his principal object. The description of things and properties does not always consist of analyzing their essence—essence being infinitely remote, perhaps, and having myriad appearances—but, sometimes at least, of calling attention to new forms and shades

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of things by pointing a finger at others near by and more familiar.

When Duguit turns from political philosophy and as a constitutional lawyer deals with matters of more detail, he is concerned not only with parliaments, presidential powers, administrative departments, electoral provisions, and the like, but also to some extent with the structure of workers' organizations and voluntary associations of various kinds, whether confined within a nation-state or crossing its frontiers.[1] Each of these groups has its own law, which is at the same time in many instances a part of the law whereby the nation-state is organized. Each is to some extent autonomous, to some extent dependent upon a larger community. The whole body, indeed, of juridical rules is an organic growth comprising international, national, and intra-national law. The identity, however, of these rules can be indicated only approximately.

In defense of the "approximate," let it be remembered that no conception of law—not even the current view that it is the command of the sovereign state—can give it an absolutely definite meaning. What, for example, are the exact limits of law in the United States if law be considered as the will of a determinate legal sovereign? The question is tantamount to the query: Who is the sovereign?

In the United States the people are said, in a sense perhaps truly, to be sovereign; but not so in a juristic sense. The people are that ultimate sovereign described by Burke as a "partnership in all science . . . . in all art . . . . in every virtue and in all perfection (Would he have admitted also "all imperfection"?), a partnership the ends of which cannot be obtained in many generations, a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born." The people support, or at least they tolerate, the arrangements of government that exist. But they are not, according to any logical doctrine, the *legal* sovereign. The courts of this country will

[1] *Law in the Modern State* (translated by F. and H. Laski).

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never go behind the federal Constitution, except to make sure that some item in question has been duly made a part of the Constitution; and in ascertaining this fact they inquire, not into the will of the people, nor into the will of the electorate, but into that, simply, of the authority which may legally amend the Constitution. The Supreme Court, indeed, has explicitly refused to admit the legality of a state's ratification of an amendment to the federal Constitution by popular vote.

What, then, is the orthodox conception as to the residence of legal sovereignty in the United States? Sometimes sovereignty is said to be divided between nation and state; but this is a contradiction in terms. More commonly it is said to be the exercise of sovereignty that is so divided. As for the very sovereign, to quote a long sentence from Professor W. W. Willoughby: "In a written constitution or fundamental instrument of government, the original and continuing fountain of all legality, corresponding to the legal autocracy of the absolute monarch, is the particular organ or complex of organs of government, or electorate, or determinate group of individuals acting *ad hoc* as an organ of government, which is recognized to have the legal right to change the terms of the written constitution, which constitution therefore, however it may have been originally adopted, is to be regarded as continuing to have the force of law only because the constitutional organ or complex of organs so wills it."[2]

This authority may possibly, as a matter of logic, be regarded as the highest and legally unlimited source of law which the American courts will recognize. As for that provision of the amending article which would guarantee the equality of the representation of the states in the Senate, it is possible to agree, consistently enough, either with those (for example, Bryce) who say that it is no more than a moral promise of the sovereign to itself, inasmuch as it could be stricken out of the amending article through the ordinary amending process, or with those who oppose this view, in

[2] *Fundamental Concepts of Public Law*, 103-104.

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which event it must be thought of as an additional complication in the true description of the amending authority itself. The commands of this authority, however, are not always clearly spoken. The American Constitution contains much that is without meaning until supplemented, not only by legislation and by judicial decision, but also by custom. Moreover, part of the Constitution is enforceable in the courts and part of it is not. We cannot say that what is not enforceable in the courts is not law, because we regard the whole constitution as law. Again, it would seem that the rules made by Congress to regulate its own affairs are law. Why not also the rules under which the party caucus is organized? By gradual extension, not only all political, but all social, norms could be included. But this, as will appear, would be going too far.

However, admitting the logic, so far as domestic law is concerned, of the view that there is nothing that the amending authority could not legalize for the purpose of enforcement by the American courts, still is it not true that this authority is nothing but a complex of institutional operation, a process described by law, a statement of the law itself? What is thus called the legal sovereign is rather a principle embedded in the law which serves to secure its own growth. This principle is part and parcel of the Constitution; and the Constitution itself is supreme. Indeed it is possible to argue this point too much in this country, where the idea of the supremacy of the Constitution is not less in the public mind, as well as in the mind of the courts, than is the complicated process which, according to the clearest logic of the monists, is described as the legal sovereign.

In the English system it is usual to think of legal sovereignty as definitely residing in the institution of the king in Parliament. But what in reality is "the king in Parliament"? Not a body of particular men, but men—now these, now others—legally qualified and chosen, meeting and acting in a manner and place prescribed by law. The courts of England would

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not enforce as statute a rule that had been formulated by the members of Parliament at some meeting held elsewhere than at Westminster unless the necessary provision had previously been made in a way to accord with recognized legal process. Thus is "the king in Parliament" a set of legal relationships, itself a legal process, just as any social institution is a social process.

It is true that it is easier and more realistic to think of the king in Parliament than of the amending process in the United States as a personalized kind of authority. The former acts the more habitually and is the more tangible institution. Upon it the eyes of the nation are held and responsibility fixed. Yet, not only does the nature of the legal authority of Parliament, if realistically regarded, appear as itself a legal process, but also its legal power is defined in the law that already exists. For it is legal precedent, and this alone, that supplies the proof of parliamentary supremacy, so far as such supremacy is recognized for the purpose of the English courts. "The Septennial Act," says Dicey "is at once the result and the standing proof of such parliamentary sovereignty."[3] This act, together with others of its kind, demonstrates that, in general, English courts will regard as law anything that Parliament may command. Thus does the law logically, if not altogether historically,[4] derive from parliamentary sovereignty, while parliametary sovereignty likewise derives from the law. Does it logically matter to the courts, or to anyone else, which side of the shield, Parliament or the law, be said to be supreme?

But, practically, it matters greatly that the law of England, like the Constitution of the United States, stands in organic connection on the one side with the law of nations, and on the other with the structure of internal groups, the reality of which fact may be indicated somewhat more concretely in the following two sections.

[3] *Law of the Constitution* (8th ed.), 46.

[4] Cf. McIlwain, *The High Court of Parliament.*

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II. MEANING OF THE RULE OF LAW APPLIED TO INTERNATIONAL LAW

The main, though by no means the only, objection to the more orthodox conception of law is that those who are assuredly the most consistent of the exponents of this view have been driven to the pragmatically dangerous conclusion that international law is not really law, but rather of the nature of morality. It is clear that if, on the contrary, international law is to be regarded as in the full sense law, and as restricting the state in a way that is sometimes contrary to its own desire, such restriction cannot be thought of as receiving its validity from the will which it defies. Nor is there, in the present at least, or in the near future, anything that can be regarded as a supreme international law-making authority.

The relation of international law, as of law in general, to the state depends upon what the state is conceived to be. The state, in the sense of "nation-state," is secondary to law; for law existed before national sovereignty was thought of,[5] and will doubtless exist after the latter has passed away. But "the state," in the sense of an evolving community, which, with shifting boundaries, is always co-extensive with political life, is neither anterior nor posterior, neither superior nor inferior, to law. The state, in this sense, and law are like the proverbial hen and the egg.

This point is supported by a statement from the late Sir Paul Vinogradoff, with one phrase of which, however, we venture to disagree: "It is impossible," he says, "to think of law without some political organization to support it; nor is it possible to think of state without law. The first alternative is absurd, because law requires for its existence and application an organization to put it into force. The action of such an organization may be limited to recognizing and supporting rules framed by other agencies, say by priests or by juriscon-

[5] For a good, though brief, account of the history of the idea of national sovereignty, see the Introduction by Sabine and Shepard to Krabbe, *Modern Idea of the State*, pp. xv-xxvii.

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sults, or by experts in commerce or in folklore; in other cases the political element will be contributed by agreement between independent states. . . . . Although from a wider aspect the function of law may be attributed to all forms of social organization, it cannot exist anywhere without leaning directly or indirectly on some kind of political union acting as a safeguard of social order. In this sense, law requires the state as a condition of its existence.''[6]

This statement well indicates not only the mutual dependence of law and the state, but also the fact, which is difficult to deny, that law today depends greatly for its force upon some kind of organized support; which is not to say that political organization necessarily or mainly implies the use of physical force. One may consult the authority of Elihu Root, or one may ask one's own conscience, and hear it denied that law is obeyed mostly from fear of punishment. Saying that the law depends upon political organization means only, whatever may be true of primitive societies, that custom is not enough in the complexity of modern life.

In what sense, however, does Vinogradoff speak of ''independent states''? Is international law considered to be unlike other positive law in being largely a matter of agreement? Hardly so, for he holds that all human law depends upon agreement, as assuredly it does. The similarity, in this fundamental respect, between the basis of municipal and that of international law receives illustration in a kind of law that clearly resembles both, i.e., that whereby the federal state is organized. Very often federal unions find their historical origin in a largely voluntary agreement between different states, and almost always they somehow find their rational justification in the idea of such an agreement. And the real promise between them consists less of the particular compact which at a given moment may have been entered into than of the gradual growth of interdependence. The same is true of international relations. Modern states are not independent.

[6] *Introduction to Historical Jurisprudence,* 84-85.

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They cannot be thought of as independent in terms of international law, or in terms of actual political life, but only in terms of domestic law when unrealistically considered as unrelated to anything else.

Ought international to be distinguished from municipal law by an element of coercion which exists in the one and not in the other? No, for there is already coercion in the application of international law, though it is much less systematized than in that of municipal law. Add to this the consideration that the main reason for obedience is not force, but an either conscious or unconscious consent.

Does Vinogradoff argue that consent is at present centered in the concept of the nation-state? "The state," he says, "may be defined as a juridically organized nation or a nation organized for action under legal rules"[1]—a definition, incidentally, that gives not the slightest hint as to what juristic terms can explain the British Empire.

There is no evidence, however, that popular interest and popular confidence have come into the monopoly of the nation-state. Rather is it to be seen that the justification of the idea of national sovereignty depends upon the *relative* importance of the *various* unities of social community. And to compare the importance of these is to consider not only the traditions of the last two or three centuries, but also what is necessary if men are to look hopefully ahead. It is error to think that there does not already exist an international community waiting only to grow stronger.

International law exists. It is not necessary that it should be applied by a single predominant authority. That the World Court does not yet function as well as it might, and that the relation between national courts and international law has not yet been well arranged, is of much, yet not of the first, importance. Nor is it a vital matter that international law is not supported by a unified hierarchy of executive authority. To recall, for the purpose of argument by analogy, a matter

[1] *Historical Jurisprudence,* 85.

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of history, what shall we say of the government which prepared and carried out the resistance of 1776? And of the Articles of Confederation which prepared the way for the Union? And, indeed, of the Union itself before 1865, when the Civil War in a way settled the previously existing dispute about sovereignty? Abraham Lincoln's statement that the Union is older than the states, though not true as a description of sovereign units according to the now orthodox view of the state, was actually true, not only as a description of public interest as it existed before the establishment of the state constitutions, but also as a description of effective national government. For it is possible to have government—though not of the most effective kind—without a unified system of courts, without a centralized executive agency, and without a central legislature.

That government should be well ordered is, doubtless, always a desideratum; a supreme, central government is of advantage, even if the law allows but limited power. Yet the fact that there is law is the matter of prime importance. In the politics of the world, the League of Nations may not prosper, and the Court of International Justice may not for a long time include all nations; both, however, are parts of the changing and growing machinery of government that is being, and must be, constructed upon the basis of the international law that really exists. At present, for the purpose of peace, it is most feasible that the law itself, rather than any particular international organization, should constitute the object of reverence. And it is not the worse for this point of view that the counsel of immediate feasibility coincides with an idea that is eminently historical.[8]

Thus it has been said in this argument, not that there is no difference whatever between international and municipal law, but that the difference between them is tending to diminish

[8] It is pointed out in Carlyle's *History of Medieval Political Theories* that whatever there was of order in the medieval world was due to the idea of the supremacy of law.

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as we arrive at such political conceptions as help and do not hinder the tendency to look upon international law as enjoying full juristic meaning. This tendency is a beneficient one, an indication of that good public disposition which is more important than any question of legal technicality. Yet it is precisely the technical defense of the idea of national sovereignty that has proved most intractable. The lawyer is perhaps naturally and properly a conservative. Political science, however, being a near neighbor to jurisprudence, ought to show less impatience than has sociology.

One may ask whether the rule of law is to be construed from the modern viewpoint to mean that national courts may be expected to enforce international law that clearly conflicts with municipal law. The affirmative view of Kelsen and others of the Austrian school doubtless points toward the realities of the future. But judicial decisions could be quoted to show that to the present time this view has been nowhere greatly favored by the courts.[9] And for this reason a realistic political philosophy, to a considerable extent, must carry a tone of protest against the current juristic ideas. There are, indeed, cases of prize court and admiralty court jurisdiction in which apparent conflicts between domestic and international law have been decided in favor of the latter.[10] But on the whole it is unusual for any court to enforce a rule of international law if it is clearly contradicted by a command of the nation-state. On the other hand, it is of great importance that the content of international law has already been generally adopted as a part of various systems of municipal law. As long ago as 1804, the Supreme Court of the United States, in the case of the *Charming Betsy,* said that "an act of Congress ought

[9] The following cases are quoted in W. W. Willoughby, *The Fundamental Concepts of Public Law,* 286: The Charming Betsy, 2 Cr. 64; The Nereid, 9 Cr. 383 ["Till an act (of Congress) be passed the court is bound by the law of nations, which is a part of the law of the land"]; The Tottawana, 21 Wall. 558; The Queen v. Keyn (English case) Law Reports, 2 Exchequer Div. 68.2.

[10] See Holland's essay on "International Law and Acts of Parliament," in *Studies in International Law,* p. 176.

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never to be construed to violate the law of nations if any other possible construction remains." The courts of other countries have spoken similarly.

But favorably as national authorities speak of international law in general, with an adequate conception of the rule of law they would be more scrupulous when it comes to the specific point, lack of scrupulosity being often—indeed always, if Socrates is right—at bottom a lack of discernment. While a great many cases could be quoted to show that the courts of civilized countries in the main regard it as their duty to enforce the principles of international law, it is not always really sufficiently so. Consider an example from outside our own country. In a recent case[11] from which we quote (beginning in the middle of the argument), the Lord Chief Justice of England spoke as follows: "But the expressions used by Lord Mansfield, when dealing with the particular and recognized rule of international law on this subject, that the law of nations forms part of the law of England, ought not to be construed so as to include as part of the law of England opinions of text writers upon a question as to which there is no evidence that Great Britain has ever assented and, *a fortiori,* if they are contrary to the principles of law as declared by her courts." But, may it be said that one of the principles of English law is that which includes the terms of international law? Could the court not logically have held, as English prize courts often have done, that though the particular instance of the will of Parliament involved in this case appeared to be contrary to international law, yet Parliament, having signified its approval of international law as a whole, did not really intend a command which, if enforced, would be contrary thereto? The law is full of apparent conflicts until they are resolved by the courts. Such a decision would not have implied a defiance of the will of Parliament. It would have assumed the identity of the will of Parliament with the rule of law. Thus would the court have recognized the fact of the organic relationship between

[11] West Rand Central Gold Mining Company v. King (L. R. 1905, a KB 3 91).

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municipal and international law, without having disregarded a legal fiction which in the past has been of good use.

Technical matters require time in which to adapt themselves to a new order. Suppose that upon the case just cited we have not presented the best legalistic view, and that there was really no way for the court to render a decision favorable to international law. Then the responsibility for the conflict of law involved in this case must be put upon "the High Court of Parliament." It is to be presumed that Parliament is unwilling to retract to any degree its endorsement of accepted international law (all civilized nations alleging, though often forgetting, that there is an accepted international law). Then, in view of its own desire, and in conformity to the rule of law, a conscientious parliament would never enact anything which could reasonably be construed as contrary thereto. Indeed, it would recognize that it has no legal right so to enact. For Parliament is in more than one instance in reality bound by law of its own previous enactment. For example, Parliament could not change the terms of the British North America Act without sanction of the representatives of the Canadian people. An English barrister would likely affirm that it could legally do so; but it would be agreed that *actually* Parliament must recognize the British North America Act as law that is binding upon itself until the Canadian public, speaking through the Canadian parliament, desires to have it changed. Such an arrangement, like international law, is enforced by the sum of political sentiment.

The British Commonwealth of Nations affords an excellent example of how political sentiment is slowly but perceptibly changing the juristic concepts of the modern world. Whatever literal-minded British lawyers may say, the Imperial Conference of 1926 seems to support the view that the British Parliament can no longer be usefully regarded as sovereign throughout the whole of the Commonwealth, and the Conference of 1930 probably will be found to have further emphasized this important development. What legal unity there

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is in the Commonwealth of Nations is symbolized, not by "the king in Parliament," but by the king alone. "It is more accurate to say the king than the crown," says President Lowell, "for the latter in Great Britain includes all the functions vested therein by acts of Parliament, which are not always the same in the Dominions. Again, it might be misleading in this connection to speak of the king as the sovereign, for the British use that term in two different senses. Popularly, it is used for the wearer of the crown; but among political philosophers it means the ultimate source of authority, and in that sense the sovereignty in Great Britain, although delegated to Parliament, resides in the last resort in the electorate, as from this time forth it will also in the Dominions."[12] The electorate, however, as Dicey explained, is not the *legal* sovereign in Great Britain; nor is it so either in the Dominions separately or in the whole of the Commonwealth. "The only bond of Empire now," says Lowell, "is the king; not the king in council or in Parliament, but the king in person." Yet the king in person is nowhere in the Empire that authority "whose commands the courts will enforce." For the Empire as a whole there is no such single authority. The crown is the symbol of imperial unity, whether it is so as an undivided crown or as a divided crown under a personal union; but that which makes the Empire one in a legal sense is legal history—is the law itself.

The various obscurities, and the essential self-contradictoriness, of the attempts to fit the concept of legal sovereignty to the modern British Empire as a single institution need not be labored. It is our point, rather, that similar to the relationships which compose the legal unity of the British Commonwealth of Nations are those which join its parts and the whole of it to the rest of the world. Anyone who looks at the treaty which was made the basis of the constitution of the Irish Free State observes the impossibility of making a clear distinction

[12] World Peace Foundation Pamphlets, *The British Commonwealth of Nations*, Vol. x, no. 6, pp. 580-581.

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between this inter-imperial relationship and the relations of Britain with many a so-called sovereign state. Nor is it important so to distinguish. Rather, it is increasingly important not to distinguish. International and municipal law are inextricably interwoven, not only with each other, but also, as will be further noticed, with a variety of other rules and regulations of an increasingly political kind. Not every rule of social conduct belongs to the political sphere; but the new political unity is far more comprehensive than the old. The rule of law, which today is harmonizing international law with that of the nation-state into a single piece, is beginning to engulf also a still wider relationship—one, however, that is not so wide as to identify what may be called the new state with society itself. Just how far the spreading rule of law will extend, and whether or not it is to be hindered by more or less catastrophic episodes, the future will tell.

III. FUTURE POSSIBILITIES OF THE RULE OF LAW

Modern society is more and more a federation of groups. It is of no avail to oppose the formation of these. Nor will it conduce to the general good to permit them to crystallize into institutions hostile to the state. They are already inseparable from the state, though not in harmony with it. Much of the law that is bone and sinew of business organizations is at the same time, even according to the orthodox conception, law of the state.[13] It would be of advantage if the courts would generally recognize the increasingly legal nature of the constitutional frame of the trade-union system, and, where the courts cannot do so alone, if law-making bodies would do their share in the harmonization of law, as they have already done to a great extent in the enactment of the law of nations as part of municipal law.[14] Only through the letter and the spirit

[13] Cf. Léon Duguit, *Law in the Modern State.*

[14] The following is a provision of the new German constitution: "The universally recognized rules of international law are accepted as integral and obligatory parts of the law of the German Reich." Ch. I, sec. 1, art. 4.

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of law will it be possible to avoid a disastrous conflict between the state and other political-economic groups. Whether or not one approves of the trend, the fact remains that economic groups are becoming more and more political, while the state is becoming more economic. There are many economic groups, like the United States Chamber of Commerce, whose activities are quite as much political as they are economic. There is many an individual whose membership in Congress is thoroughly harmonized with his participation in some business corporation. Not only avowedly political groups, such as the political parties, but also what are ostensibly economic groups, belong largely and increasingly in the category of political organization. All along the line, though it is a difficult union, political and economic activities tend to merge.

Workers' groups are rapidly becoming closely associated with the state, as a development parallel to that capitalistic organization which is even more closely allied with it. Surely in this respect the political-economic development of the Western culture which dominates the modern world is fundamentally similar in the various American-European countries. Though Russia has never passed through the capitalistic stage of properly Western countries, yet she is already approaching the industrial development of the West, while at the same time the West is moving—one may hope that it will never move violently—into something like the union of political and economic institutions which has so painfully sprung into existence in Russia. Mussolini's act of transforming the Italian workers' organizations into an organic part of the political machine which he controls is evidence in point. Mussolini, perhaps, stands as far from the Bolshevist point of view as anyone in Europe, but he recognizes the inevitability of political-economic federalism, whether controlled mainly from the top or mainly from the base of the structure. The increasing importance of the economic councils in Germany and other central European countries, the approach (though it may hardly come for some years yet), of labor legislation in England, the

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gradual realization of socialistic programs in some of the smaller countries of Europe, are all evidence in point. The anti-political attitude of the American Federation of Labor would seem to be transitional, so that, as in the history of the British labor movement, as it grows stronger it will become increasingly identified with political organization. For the opinion is spreading that political democracy apart from economic democracy means little more than a formal right to cast a vote, a vote which is not seldom sold at a low price.

The law of the state is in organic relation also with non-economic groups. But the activities of those which are neither on their face political nor economic are not, in the main, sufficiently political to warrant the inclusion of the detailed rules by which they are organized in the body of political law. No one knows what the future has in store, but at present it would seem ridiculous to include in the category of political law a rule like that which requires all freshmen in the University of Keepstep to wear little green caps. Again, though in the past canon law has had a close connection with the state, it is now quite separate, and it is not tending to become a part of the "new state." Of course, religious and political issues cannot be kept entirely apart. One remembers the sensational Scopes trial in the courts of Tennessee concerning the teaching of evolution in the public schools, in which the issue was mainly religious. But such bits of recent history are not evidence of a general tendency for organized religion to become more and more closely associated with politics. The religious issue in the presidential campaign of 1928 was, of course, by no means negligible; but it does not compare in importance with the religious issues in the European politics of the last century and earlier.

The family, it may be ventured, will remain an institution substantially separate from the state. No one seriously believes that the part of Plato's ideal here concerned is to be attempted by the Bolsheviki or by anyone else. Though women are being emancipated, with the possible, though not likely, re-

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sult that the family as an institution will suffer a decline, it is not therefore becoming more intimately a part of the state. On the contrary, in some "advanced" circles the inclination is to favor marriage more as a moral and less as a legal bond than it has been in the past.

Beneficent growth of law, however, depends less upon the itemization of its content than upon the general recognition, by courts, by legislators, by governors and voters, that its extent is wider than is commonly thought; and much depends upon the conscious effort of those nearest concerned to facilitate the harmonization of its elements.

IV. CONCLUSION

The idea of the sovereign nation-state may live on for a hundred years or more, but in a less useful way than before. Such institutions rise and decline gradually. It is still possible to observe fragments of feudalism. We are not upon the verge of cataclysmic change, but yet of change.

The new political order is not, perhaps, one in which the *polis,* in an expanded sense of the word, is synonymous with society, as it practically was in ancient Greece. The distinction between the political and the social norm of today is that the latter includes the former, and more. There are social norms that have no tendency to approach the political sphere. Yet the new state holds far more than the old. The rule of law is a comprehensive institution which, to the extent that courts and legislatures, masters of industry and leaders of labor, are aware of the social trends, will succeed in becoming more and more integrated. It will in time become unified so as to apply physical force more effectively than it now does to that part of it which is international law. Not that the chief attribute of law is physical force. Law is the more effective when there is so near a unanimity of belief in its necessity that force can readily be applied against the relatively rare infraction of the law; but the law of the new state, like that of the old nation-state in its more limited sphere, is achieving recognition

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of supremacy, not fundamentally from coercion, but from public confidence.

Whether the rule thus indicated is rightly named "law," is, of course, a matter of words. What can be more in point than the meaning of such words as give to men their common purposes? To agree to give to a rule of conduct the name of law is often to improve its dignity, almost always to enlarge its dominion. To deny it the name is to deny to it power; for law derives its force from "the primitive energy of the word."

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PERMANENT DELEGATIONS TO THE LEAGUE OF NATIONS

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I. NATURE AND NOMENCLATURE

The student of international organization who visits the League of Nations in its home city of Geneva encounters one phenomenon associated with the organization and activity of the League which seldom receives much, if any, attention in the news of the day or in current discussions of League problems. That is the so-called Permanent Delegation to the League of Nations. As will appear, these institutions are sometimes located elsewhere than in Geneva; but most of them are located there, and it is there that their activities are most easily observable. It is proposed to describe this institution as regards its nature and its proper nomenclature, its history, its organization, its functions, and its actual and potential value for international government.[1]

The title inscribed at the head of this paper was adopted,

[1] This study is based upon documentary materials in the League Secretariat, observation of and visits to most of the delegations in Geneva, and conferences with various persons in both the Secretariat and the delegations. It should be said, however, that the absence of a current list of such delegations issued by the Secretariat which could be relied upon by the student, and the absence of any full—or even partial—documentation of the subject by the Secretariat, makes investigation of the problem very difficult; the grounds upon which this attitude of the Secretariat rests will appear later. And no student of such problems will be surprised by the additional statement that the delegations themselves lack complete records and information on their own history. An article by S. H. Bailey in the *Spectator* for January 18, 1930, and unsigned articles in *Servant of India* for February 13, 1930, and the Canadian *Labour Gazette* for January, 1925, were read, and Ottlik's *Annuaire de la Société des Nations* and the *Annuaire International de Genève,* published by the Centre Permanent d'Informations Internationales, were consulted. There are also brief references to the problem in an article by Corbett in *British Year Book of International Law* (1924-25), p. 122; in Schücking and Wehberg's *Satzung des Völkerbundes,* pp. 116-117; and in Fauchille's *Droit International* (No. 660) and elsewhere.

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to speak frankly, because it had become somewhat familiar by usage, official and unofficial, and because, superficially at least, it seems to describe the institution under discussion. A little analysis, however, will reveal both its shortcomings and the difficulty of labelling, in familiar language, the phenomenon in question. Both the nature and the consequent nomenclature of the institution must be studied by reference to the formal legal status given to it by the official agencies creating and maintaining it, and also by reference to its own activities and essential character as observed in operation; the former test will be applied first and the second reverted to later.

The League of Nations consists of certain member states and an extensive and more or less symmetrical system of agencies for expressing and executing the wishes of those member states in regard to the matters which they have declared to lie within the scope of action of their association. These functions of policy-formation and policy-administration are distributed over several types of League organs—conference, court, commission—at the center of which stands the permanent Secretariat, in principle an administrative agency solely, and the representative organs, the Council and the Assembly. The permanent delegations must be considered in relation to this system of representation and execution.[2]

All of the member states are represented in the Assembly of the League, which meets annually for three or four weeks. Fourteen of them are represented on the Council at any given time, five permanently and nine others for terms of three years each by election of the Assembly; and the Council meets three times a year—formerly four—for several days. Most, if not all, of the member states are represented in some one or more conferences held during the course of each year under League auspices. Finally, among the administrative officials and em-

[2] The position of the International Labor Office and of the whole International Labor Organization, as well as that of the World Court, in relation to this question, will be discussed later; for purposes of simplification and clarity, the League is considered here apart from these institutions.

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ployees in the Secretariat, and upon various League commissions, are to be found nationals of most, if not all, of the member states, and of some non-member states as well. Members of the Secretariat are not, in principle, authorized to act there as representatives of the states of which they happen to be nationals, they having been chosen by the Secretary-General and confirmed by the Council for reasons of personal capacity in the administrative work to be performed. They are "responsible in the execution of their duties to the Secretary-General alone."[3] Members of technical League commissions are independent experts who advise the Council rather than nationals who represent their governments.

It was to secure some sort of representation in Geneva between Assembly meetings, and between Council meetings, when the member state was not represented on the Council or a given League conference, or when no such meeting was in session, over and above its nationals in the Secretariat, or to coördinate its representation in various League organs, that the member state or states created the so-called permanent delegations. This representation was needed chiefly for the purpose of keeping the state informed on League business, although this initial purpose by no means exhausts the present functions or potential usefulness of these agencies. The principal element in the institution in question was, and is, the permanent or continuous character of the representation.

The true nature of these agencies may be appreciated further by a process of elimination, by seeing what they are not. Thus, in the main, and though they often perform this function, these agents of member states were not intended as delegates to Assembly, Council, or Conference meetings. In view of this fact, and also because most of these "delegations" are one-man agencies, and have no real authority delegated to them nor any power of representation in a serious sense, the term "delegation" is somewhat of a misnomer when used in describing them. Indeed, the delegation of representative authority

[3] Cf. Article 1 of the Staff Regulations, League of Nations Secretariat.

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from the appointing states to these agents is their least prevalent characteristic.

Nor, secondly, are these agents appointed to act, speaking strictly, in reference to the League of Nations as such, but rather with reference to the Secretariat and similar administrative branches of the League. In the early days they were said to be "accredited to the Secretariat," and it has been the desire of the Secretariat to avoid being placed in a controversial position, rather than any feeling that this phrase was erroneous, which has led to a change in the formula. Not only are these "delegates" not, in the main, appointed as delegates to representative organs of the League machinery, but they also have few or no functions vis-à-vis the other states members of the League, or the League as a union of states.

Finally, these agents are not, in spite of the term often used—and used at times in documents issued by the Secretariat—necessarily "accredited" to the League, the Secretariat, or to any other public authority. They do not always possess the power to speak authoritatively for the states which have appointed them; nor is the Secretary-General in all cases asked by the appointing state to give credence to its agent as its spokesman—the essence of being accredited—and the agents do not always even formally notify the Secretariat of their appointment. It is conceivable that such an agent might perform his functions for some time without formally or officially establishing relations with the Secretary-General at all.

The more strictly legal aspects of the diplomatic status of these agents do not, perhaps, constitute the most important phase of the institution; but exploration of this side of the question serves to throw additional light upon the whole problem. To begin with, these agents do not seem to belong entirely in the same class with diplomatic agents accredited by one state to another.[4] No agents are sent to member states by the League or the Secretariat in exchange for these "delegations." There is no formal or authoritative "reception" of these agents

[4] A contrary opinion is expressed in Schücking and Wehberg, pp. 116-117.

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by the Secretariat and, in most cases, nothing remotely resembling it; hence there is no extending or withholding of recognition on the part of the Secretariat, as regards the permanent delegate, his government, or his state. These agents do not present letters of credence, properly speaking, nor do they carry such a document, although most of them carry letters from their states to the Secretary-General giving notice of their appointment. In some cases, no such letter is transmitted and the Secretary-General is merely notified of the appointment, either by the agent himself or by his government. In most cases there is no *agréation,* or preliminary understanding, with the Secretariat as to the person whom a member state contemplates appointing to such a post, although this has occurred in a few cases; indeed the Secretariat, in order not to offend, has carefully avoided entering into decisive transactions with either the appointing states or the Swiss government on the whole matter, and it does not appear that the Council or Assembly or any other League organ has dealt with the question authoritatively.

On the other hand, many, and indeed a large majority, of these agents are given diplomatic title, or at least diplomatic rank, usually that of minister, by their own states, in so far as the latter are competent to do this, though the Secretariat maintains the attitude just cited, and simply takes note of and in courtesy employs the title or rank conferred on the agent by his own government. This indicates to some extent the importance attached by the states to their permanent delegates. What is more important still, from a strictly technical viewpoint, in relation to status, is the fact that whether or not the member state confers ministerial rank on its agent now makes little difference; for Switzerland has on her part, in 1922, recognized these agents, according to Article VII, Paragraph 4, of the Covenant,[5] as having first class diplomatic

[5] This paragraph reads: "Representatives of the members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities."

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status. In a number of cases, moreover, diplomatic agents accredited to Berne or Paris are appointed "delegates" to the League likewise, not to mention here either consular agents in Geneva or elsewhere so employed or League Council members treated as "permanent" delegates for the time being.

In view of all of these facts, the reference of the Swiss government to the "missions" in Geneva, and the reference of the *Journal de Genève* to the "corps diplomatique" in Geneva, may be understood, although it hardly needs to be said that the "delegations" never meet or act as a body, diplomatic or otherwise; indeed, they have very few dealings one with another. At the same time, it will be clear that any attempt to picture the delegations as diplomatic agents proper must encounter great difficulties. This will appear still more clearly when the functions of the delegations are examined.

Enough has been said, perhaps, to indicate the peculiar character of the institution under discussion, and the difficulty of giving it a brief descriptive title. We may pause to note the history of the practice and to study further the organization and functions of the permanent delegation before drawing conclusions.

II. ORIGIN AND HISTORY

The permanent delegations began with that of Poland, established in the first year of the League's life, namely 1920. Already at this time other governments had instructed their diplomatic representatives in Paris or Berne, or their consuls in Geneva, to act as liaison officers for maintaining contact with the League, as various states represented in Washington or Rome instruct their representatives there to keep in touch with the Pan-American Union or the Institute of Agriculture, as the case may be; and this testifies to the normal, and even routine, character of the origin of these delegations. But it was Poland that first set up a permanent delegation in Geneva distinct from established consular and diplomatic agencies.

Not only did the permanent delegations originate earlier than is commonly supposed; they also multiplied more rapidly.

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The year 1920 saw the creation of a number of such agencies, until, in March, 1921, the Secretariat compiled its first (unofficial) list of twenty-one.[6] By January, 1922, the number reached twenty-five, of which ten were located in Geneva, ten in Paris, four in Berne, and one in Monaco.

No purpose would be served by recounting all the steps by which the list of delegations has grown through the past decade. As will appear later, the total number now has reached forty-three, of which twenty-seven are located in Geneva, six in Paris, eight in Berne (three with branch offices in Geneva), one in Brussels, and one in Berlin. But certain salient features of the development of the delegations in number, identity, and location may be pointed out.

Thus it is obvious that there has appeared a tendency for member states to station their delegations in Geneva rather than, as in the period immediately after the Peace Conference and the first establishment of the League, in Paris or Berne. Such a development needs no explanation.

On the other hand, it is probably true that in 1920 and 1921 a larger number of states—not necessarily member states—maintained delegations than do so today in proportion to the total League membership, unless routine orders to foreign diplomats or consuls in Switzerland to report to their home governments on all political matters of interest within their jurisdiction are considered along with the establishment of permanent delegations in so many words. At least the percentage was higher early in 1921 than it was three years later. This is explained by the fact that certain states which maintained delegations in the early years ceased to do so later. The delegations, it is true, seem to be increasing in importance today, and during the past five years they have increased in numbers; but earlier still there were several delegations which no longer exist.

The simplest instance of this type is that of the state which ceased to exist as an independent unit. This was the case with

[6] *Official Journal*, May, 1921, p. 305.

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Armenia and the Ukraine, which maintained delegations that were regarded as such by the Secretariat as late as 1922—the Armenian in Geneva and that of the Ukraine in Paris. In one case, that of Brazil, the delegation was closed with the withdrawal of the state from the League. In other instances, however, states still in existence and belonging to the League have apparently concluded to terminate their delegations for relative lack of utility in proportion to the expense involved—perhaps to rely upon a minister or a consul or nationals stationed somewhere in League organizations. Such are the cases of Esthonia, Lithuania, and Luxembourg.

Third, there seems to have appeared more recently a tendency on the part of the appointing states to confer upon their permanent delegates diplomatic (ministerial and even ambassadorial)[7] rank. Such a movement may have some significance as an indication of the attitude of the appointing states.

It must not be supposed that the termination of established delegations has formed the only type of change in the list as at first constituted. There have been, of course, constant accessions, and accessions have more than balanced losses, in absolute numbers. There have also occurred cases where delegations have been created, then terminated, and later resumed. This seems to have happened in the cases of the Albanian, Czechoslovak, and Rumanian delegations.

A study of the individual delegations might prove valuable if time and space permitted. Such a study cannot be attempted here, but attention may be called to a few individual cases of unusual interest. Thus may be noted the maintenance of an Argentine delegation in spite of the ambiguous position of Argentina with respect to membership in the League. Just what significance, if any, is to be attached to this action, however, seems doubtful. On the other hand, there are such cases as those of Poland, Rumania, Austria, and Hungary, whose delegations were created early, maintained steadily, and may

[7] Brazil alone seems to have employed this rank. See *Official Journal*, May, 1924, p. 761.

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be regarded as among the most vigorous. The same may be said, with slightly different emphasis, for the delegations of China and Japan. In the last case there are further comments to be made later.

Non-member states have maintained delegations in Geneva from the beginning. The cases of Armenia and the Ukraine have been cited already, not to mention Argentina. More important is the case of Germany, which had definitely designated her consul-general to act in this capacity four years prior to her entry into the League, and, perhaps, the cases of Mexico and Turkey, now represented by specially designated observers in Geneva.

Similar action taken in recent years by the United States calls for little or no comment. The extent of the participation by the United States in League activities, growing steadily from 1922 onwards, is well known. From the beginning, the United States consulate in Geneva acted, under instructions from Washington, keeping the government informed on League matters, and even serving as an office of liaison with the Secretariat. This activity called for both an increasing amount of time on the part of first one and later several members of the consulate staff, and for a staff especially selected for the purpose. During 1929 the United States government took into consideration the designation of a special representative for this purpose, along the line of the permanent delegations, and on June 3, 1930, the Department of State announced the appointment of Mr. Prentiss Gilbert, formerly assistant chief of the Western European Division of the Department, as consul in Geneva, with special duties regarding liaison with the League. Prior to this time, work had in fact been carried on by Consul S. Pinkney Tuck and, later, Consul Elbridge Rand; Mr. Gilbert replaces Mr. Rand. New and larger quarters for the American consulate, not to say the American delegation, had recently been obtained in the city—quarters which, incidentally, are located in closer proximity to the Secretariat. The American liaison will remain simpler in structure and less

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pretentious in rank and style than those of Japan or China, and perhaps one or two others, but will possess a more definite status than any representation on the part of the major European powers—Great Britain, France, Italy, or Germany. Communications between the League and the United States government will still proceed through the legation at Berne. The step now publicly taken is believed not to indicate any change in the theory of American relations with the League; after all, we have become more and more deeply engaged in League activities even since 1922. It does, however, signify a recognition and proclamation of the increased importance and volume of League activities in which the United States participates. It increases the personnel of the consulate available for League liaison work, and it brings to the consulate a man who has, in the Department itself, had broad experience with the political and diplomatic problems involved in League work.

Such is the history of the permanent delegations. When they first appeared, they caused some surprise. Today a writer who apparently forgets this is led to say that they were contemplated in the Covenant, which seems a slight exaggeration.[8] But, in any event, they are here, and it behooves us to understand and evaluate them as they exist.

III. ORGANIZATION

The salient features—or some of them—of the organization of the permanent delegations have been mentioned already. It is now proper to sum up the principal facts in this connection and to complete the picture in so far as it has not already been given.

The permanent delegations consist either of special appointees who have no other function than that of representing a state vis-à-vis the League, or of diplomatic or consular agents to whom is assigned this function. Even without special in-

[8] P. H. Frei, *La Situation Juridique des Représentants des Membres de la Société des Nations*, p. 27.

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structions, all foreign diplomatic representatives in Switzerland and consular agents in Geneva would be expected and empowered, in the normal course of routine duty, to keep their home governments—members or non-members—informed on League affairs affecting them, and, indeed, to deal with the League in so far as their instructions permitted them to do so in any given set of circumstances. But in a number of cases the diplomatic or consular agents have been given special duties in this direction.

Where special appointees—rather than established foreign service agents—are delegated the task of maintaining contact with the League, they reside in Geneva; foreign service agents to whom has been assigned this function may reside in Geneva (consuls) or Berne or Paris or elsewhere—even as far away as London, Berlin, or Rome. Where a foreign state is represented by a minister in Berne and at the same time by a consul in Geneva, the latter would normally be subject to some degree of supervision and direction by the former, so that, either without special assignment of League contact functions to the minister or in the presence of such instructions, the consul in Geneva would be empowered and expected to assist the minister in this matter. In one or two cases in the past, members of the Council from certain states, residing, as diplomatic representatives to France, in Paris, have functioned as permanent delegates to the League; but here the "permanent" character of the service is obviously questionable, even if the agent is, in this case, a true delegate for the time being. Moreover, he is clearly not a functionary of the type of the ordinary "permanent delegate." Most of the delegations today are special delegations and reside in Geneva, even when the states are represented by diplomatic or consular agents in Switzerland also.

The delegations are appointed in all cases by the chief executive or foreign minister of the home state. They are chosen from among nationals of that state ordinarily—there has been one exception to this—and, as has been indicated already, the

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Secretariat exercises practically no influence, and certainly no control, in this matter. In one case, a given individual has served for a time as delegate from two countries. No women have been appointed permanent delegates as yet. These delegations exist and act independently of one another. Only the slightest sort of contact exists among them.

The relations of the delegations with the League are conducted mainly with the Secretariat and administrative commissions, although they also have a good deal of contact with the Assembly, the Council, and special conferences. They have much contact, too, with the delegates to League conferences from the home state. They deal—or most of them do—with the International Labor Organization or, more specifically, the International Labor Office, as well as the League; in many cases they are designated or instructed for this function explicitly, and in some cases delegates are designated for the Labor Organization exclusively, alongside of, or without, an accompanying delegate to the Secretariat. In any event, a delegate to the League would, in absence of restrictive instructions, be capable of dealing with the Labor Organization, in view of the fact that the latter organization is, in principle, a part of the League. The delegations have no contact, or almost none, with the Permanent Court of International Justice at The Hague.

The nature of the relations between the delegations, on the one hand, and the Secretary-General, the Director of the Labor Office, and their staffs, on the other, vary widely. Some delegates are hardly known to the Secretary-General or the Director, although this means that they have no very definite position and are not very active. Some have been received—in an informal sense—by the Secretary-General and by the Director. Some are frequently seen in and around Secretariat offices, Council and Assembly meetings, and some not. Some are familiar figures, and even celebrated characters in Geneva, while some are almost unknown.

Finally, the delegations are organized internally in a variety

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of ways. Diplomatic or consular establishments functioning in this capacity are organized as are diplomatic and consular establishments generally, except that in some cases one or more diplomatic secretaries or members of the consular staff will be designated to perform this particular service. Special establishments in Geneva vary from the one-man post, with or without a clerk, to the rather elaborate establishment with a minister—if not an ambassador—in charge, a counsellor who occasionally acts as *chargé d'affaires,* several secretaries and clerks, and even attachés for the Labor Office and the press. In general, the simpler type of establishment predominates.

Although not strictly a part of the permanent delegations, certain other features of governmental organization in the League and League member states may be given mention here because of their connection therewith. Thus a number of member states have created, within their governmental departments for foreign affairs, units charged with handling the business of the state with the League.[9] Such an arrangement exists, albeit without formal designation, in the American Department of State. Where this has been done, the bureau in question has contact with the permanent delegation maintained by the state in Geneva, if any, and the two are regarded by the Secretariat as two phases of one service, namely, contact between the state in question and itself. One curious feature of the situation is seen in the fact that all of the leading European powers, which, as already mentioned, have no permanent delegations, in the strict sense, in Geneva, have such League of Nations bureaus in their departments of foreign affairs. Needless to say, such bureaus are less numerous in member-state capitals than the delegations in Geneva or elsewhere.

It was said that the Secretariat sends out to member states no representatives in exchange for the permanent delegates. This is strictly true, but two types of League or Secretariat organizations approach such action somewhat remotely. These

[9] See early list in *Official Journal,* May, 1921, p. 306.

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are the field offices and correspondents of the Information Section of the Secretariat and of the Labor Office, and the Latin American Liaison Office in the Secretariat. It does not appear that the League liaison officers in various foreign capitals—Paris, London, Rome, Tokio, Berlin, and Washington (Labor Office only)—or the correspondents and liaison officers who are moved about from point to point in Europe, America, and Asia, should be said to enter very deeply into this system of contact and communication with member-state governments, although contacts among them are constantly being made. These League agencies serve chiefly, not for communication with member states, but for rather general collection of information from, and distribution of information to, persons and groups of persons other than member governments. On the other hand, the Latin American Liaison Office in the Secretariat maintains close and constant contact with Latin American delegations—ten or more in number—in Geneva, Berne, or Paris. Taken in their entirety, these agencies constitute a rather elaborate system of intra-League communication.

IV. FUNCTIONS

The function which is most characteristic of the permanent delegation is that of acting as a channel of communication between the appointing government and the Secretariat. This involves receiving from the former messages addressed to the latter and transmitting them thereto, and vice versa. It involves receiving from the Secretariat multitudes of League documents for transmission to the home government, and to a slight extent the reverse; this service is not performed by all of the delegations, although almost all of them receive copies of documents transmitted directly to their governments, just as they also receive copies of communications passing between the two.

Next comes the service of providing information and advice. The delegate keeps the Secretariat informed regarding political and social conditions, the state of opinion, and the actions

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of his government back home, and may even proffer his advice on projected League actions of interest to the latter. This he does by instruction, but also on his own initiative or by virtue of his position and his standing instructions relating thereto. He informs and advises his home government, or delegations from the home government temporarily attending international conferences in Geneva or elsewhere, on conditions and actions in the League or other member states of interest to his nation. This may become a mild species of secret intelligence work in Geneva. Or it may take the form of laborious scientific research in the documentary and other materials available there.

The tendering of advice to League authorities easily becomes an effort to promote the national interest, and it may fairly be said that the permanent delegate under general or special instructions attempts by appropriate action at all times to accomplish this normal purpose vis-à-vis League officials, as well as toward the delegates of other states represented in Geneva. This activity is not, on the other hand, carried on by the permanent delegate nearly as vigorously as might be expected, and it is balanced by the service which he also renders of contributing his government's share in the support and promotion of the work of the League.

Next comes the function of the "permanent delegate" in acting—paradoxical as it sounds in view of the misnomer involved in that title—as a temporary delegate to the League Council, Assembly, labor conference or governing body, or other League conferences. He may also, of course, act as delegate to a non-League conference held in Geneva or elsewhere; but this is no part of his rôle as "permanent delegate to the League." The permanent delegates do not most of them serve in this capacity very often, nor any of them all the time, and some of them never do so; but it is a possible and, indeed, an actual function sometimes performed. Perhaps they are most likely so to act when political or other circumstances at home make difficult the selection of a special delegation.

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The relations between the permanent delegate and his fellow nationals in Geneva are rather vague, and also rather complex. He has, of course, no legal right of control or protection over them such as is exercisable by the regular diplomatic and consular representatives, although he may succeed in exercising such power by the grace of the Swiss or Genevese authorities; he seldom desires to do anything of the kind. He may and does, of course, assist travellers from his home country in all sorts of ways, such as recommending hotels, giving advice, and perhaps securing tickets to the Assembly meetings. He assists delegates from his home state to League conferences to find quarters, or makes hotel reservations for them, and his office provides them with desk space and stationery or other materials for their use in connection with their duties.

Toward his fellow-nationals in the Secretariat the permanent delegate likewise has no formal relations of control or protection. In principle, they are there as individuals and not as nationals of such and such a state, much less its representatives. But he does, of course, maintain contact with them, exchange opinions and information with them, and keep himself informed as to their status in the service. He may even have had some share in the discussions which preceded their appointment, as he might—acting for his government, of course—have some share in discussions leading to the appointment of others.

Finally, the permanent delegate engages in social activities in Geneva—entertains and is entertained—to some extent, although most of the permanent delegates are not in a position to go very far in this direction.

When this survey is completed it is seen how difficult it is to label the permanent delegation or delegate accurately in a few words, especially when his formal legal status, discussed earlier, is recalled. He is not a diplomatic representative in the strict sense, nor a consular agent. He is not strictly a delegate. He may be stationed, not in Geneva, but elsewhere. He may represent—in some sense—not a member-state but

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a non-member state, although it should be said that delegations from non-member states perform only such functions as are appropriate to the circumstances, confine their activity largely to that of observers, and perform the other functions above described (advising and negotiating) only in connection with League activities in which their (non-member) state may be participating or in which it may have an interest. Finally, the permanent delegate deals, in principle, with the League as a whole, including the Labor Organization if not the Permanent Court of International Justice; but he deals chiefly with the Secretariat.

In view of all these facts, it is not surprising to find the non-committal term "liaison" used to describe the nature of the permanent delegation. The connection involved may be semi-diplomatic, administrative, representative, or what not. It may be best to employ the general term and leave definition of the office to extended discussion.

We may now proceed to draw up our list of permanent delegations, so-called, using our own title for that list as just explained.

PERMANENT NATIONAL AGENTS FOR LIAISON WITH THE LEAGUE OF NATIONS[10]

Country	*Rank*	*Style*	*Place*
Albania	Minister	Permanent Delegate of the Kingdom of Albania near the League of Nations	Geneva

[10] No official list being available, and unofficial lists varying as widely as they do, it has been necessary to construct this list anew from all available data. The tables give (1) the names of countries maintaining permanent delegations of one type or another, (2) the rank officially conferred upon or assumed by the permanent delegate in each case, (3) the style formally bestowed upon or assumed by him, or that by which he is commonly known, and (4) the seat of the delegation. "Minister" signifies either envoy extraordinary and minister plenipotentiary or minister resident or other variants. In the style, the term "near" is a translation of "auprès" or "près," as in the familiar English phrase "near the Court of St. James." In connection with the seat of the delegation, the sign * indicates that the country in question also maintains a consulate or other office in Geneva, and the sign ** that such office is expressly designed for liaison with the Secretariat or/and the Labor Office.

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Country	*Rank*	*Style*	*Place*
[11]United States of America	Consul	———	Geneva
Argentina	Minister	———	Berne *
Austria	Minister	Representative of Austria to the League of Nations	Geneva
Bolivia	Minister	Permanent Delegate of Bolivia to the League of Nations	Geneva
Bulgaria	Minister	Representative of Bulgaria to the League of Nations	Berne **
Canada	———	Dominion of Canada Advisory Officer, League of Nations	Geneva
Chile	Minister	Permanent Secretariat near the League of Nations	Brussels *
China	Minister	Permanent Office of the Chinese Delegation to the League of Nations	Geneva
Colombia	Minister	Permanent Delegate of Colombia near the League of Nations	Geneva
Cuba	Minister	Permanent Delegate to the League of Nations	Geneva
Czechoslovakia	Minister	Permanent Delegate near the League of Nations	Berne **
Denmark	Counsellor of Legation	Permanent Delegate near the League of Nations	Geneva
Dominican Republic	Minister	———	Paris **
Ethiopia	Minister	Representative near the League of Nations	Paris
Finland	———	Permanent Representative near the League of Nations	Geneva
Germany	Consul-General	———	Geneva
Greece	Chargé d'Affaires	Permanent Greek Delegation	Geneva
Guatemala	Minister		Berlin *
Haiti	Minister	Permanent Delegate of the Republic of Haiti near the League of Nations	Paris *
Hungary	Minister	Royal Hungarian Delegation near the League of Nations	Geneva
Irish Free State	———	Representative of the Irish Free State to the League of Nations	Geneva
Italy	———	———(liaison with the International Labor Office)	Berne
Japan	Minister	Imperial Bureau of Japan for the League of Nations	Geneva and Paris

[11] Non-member states.

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Country	*Rank*	*Style*	*Place*
Jugoslavia	Minister	Permanent Delegate of the Kingdom of Jugoslavia near the League of Nations	Geneva
Latvia	Minister	Permanent Delegate near the League of Nations	Geneva
Liberia	Chargé d'Affaires	Permanent Delegate of the Republic of Liberia near the League of Nations	Geneva
Mexico	———	Observer at the League of Nations	Geneva
Netherlands	Minister	———	Berne *
Nicaragua	Minister	Permanent Delegate to the League of Nations	Paris **
Norway	Minister	Permanent Delegate of Norway near the League of Nations	Berne *
Paraguay	Minister	Delegate of Paraguay to the League of Nations	Paris
Persia	Minister	Permanent Delegate of Persia near the League of Nations	Geneva
Peru	———	Chief of the Permanent Office of Peru near the League of Nations	Geneva
Poland	Minister	Permanent Delegate of Poland near the League of Nations	Geneva
Portugal[12]	Minister	Permanent Delegate near the League of Nations	Geneva
Roumania	Minister	Royal Roumanian Legation near the League of Nations	Geneva
Siam	Minister	Permanent Delegate to the League of Nations	Geneva
South Africa	———	Accredited Representative of South Africa to the League of Nations	Geneva
Sweden	Minister	———	Berne **
Turkey	Minister	———	Berne **
Uruguay	Consul-General	——— (liaison with International Labor Office)	Geneva
Venezuela	Minister	——— (representative of Venezuela on the Council of the League of Nations)	Paris **

[12] The Portuguese office at Geneva is called a *chancellerie*.

V. VALUE

During the past few years certain rather vigorous differences of opinion have appeared concerning the value of the permanent delegation as an institution. A review of that dis-

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cussion will be attempted here and certain judgments added which seem warranted by the facts.

For the appointing state, the permanent delegate has certain obvious values. He may well be, or come to be, an abler representative of the state in League activities or in liaison with the League than any agent sent down temporarily from Berne or Paris; even a permanent delegate, so-called, stationed in Berne may be better than temporary delegates sent to Geneva from Paris or Rome. A relatively inexpensive permanent delegate is much more economical than expensive delegations sent from Buenos Aires or Tokio. For small states not represented on the Council and without many nationals in the Secretariat,[13] the permanent delegate may be more valuable than for larger powers more generously represented there.[14] The permanent delegate's services of information and advice are valuable to the home government, his social and personal aid to fellow nationals in Geneva is of at least some importance, and having him in Geneva is certainly better than having no delegate at all at this or that conference, as would at times be the case for many distant and not over-wealthy states. He may become very much of an expert at the task and thereby become very valuable indeed.

Any disadvantages which the permanent delegate may have for the individual state seem to arise as part of alleged dis-

[13] There seems to be confusion of thought in current criticism on this point. One hears the complaint that the argument just stated implies that persons in the Secretariat act as nationals of their own states in providing information and exercising influence, and that this would undermine the international character of the Secretariat civil service. The critics are quite right in the latter respect, it seems. But the fact is that the Secretariat personnel is not today entirely free from nationalistic attitudes; and the permanent delegations seem not to aggravate, but may be the best means of relieving, the situation.

[14] It will have been noted, from the list of delegations existing today, that none of the European great powers maintains a full-fledged delegation in Geneva. On the other hand, most of the delegations are maintained by small powers, and, like the governments which they represent, are not very active in League business. The result is that some eight or ten delegations, from powers such as Canada, China, Poland, and so on, constitute the most active and most prominent element in the list.

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advantages which the institution has for the League as such. Of course the use of a permanent delegate may lead the state to be satisfied with less effective representation than it could secure by sending special delegates from home, well selected for the particular conference in view; but the alleged detrimental aspects of the permanent delegate can be seen best from the international viewpoint.

Thus it is argued that the creation of the permanent delegations tends to develop about the League and the Secretariat a professional diplomatic clique and an atmosphere of professional diplomacy which is bad. Intrigue of various sorts is stimulated, it is alleged—intrigue between the permanent delegates and fellow nationals in the Secretariat and among the permanent delegates themselves. Possible efforts of the permanent delegate to obtain jobs in the Secretariat for fellow-nationals is condemned, as are his alleged activities in quest of "inside" information of all sorts. And finally it is argued that even if the permanent delegate avoids all these practices, he must inevitably fall short of the probable serviceableness of delegates chosen for special topics under discussion at any given conference—whether on drug control, finance, law, or education. Even if he were a marvelous jack-of-all trades, he would at least constitute an additional unit in the series through which the League must act and an agency standing between the Secretariat and those governments with which its relations should be as immediate and intimate as possible.

As has already been indicated, the suggestions of intrigue and snooping imputed to the permanent delegates seem unwarranted. They are not, in the main, old style diplomats in attitude or practice. They certainly do not form any united clique in Geneva. And apparently they do surprisingly little wire-pulling. However, the case for the permanent delegate is not entirely perfect. It seems true, for example, that an attempt to use him for all sorts of conferences on all kinds of subjects must be less advantageous than sending special technically-qualified delegates to those meetings. The answer

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here seems to be, however, that in many cases special delegates would not be sent, and that the permanent delegate, though not a specialist, is better than no delegate at all, especially if his function is to negotiate in terms of policy while leaving technical studies and policy formation to his government's experts—as, for that matter, any representative of the state on the Council or in the Assembly must do. At the same time, it may be hoped that states will not try to get along with the representation of the permanent delegate at various and sundry League meetings just because such representation is inexpensive, and that they will not use him in this capacity unless they believe that, because of his experience and constant contact in Geneva, he is actually better fitted to act in any given conference than would be delegates sent directly from the home government.

The possibility of allowing the Secretariat to deal directly with governments of member states deserves more analysis. If it is the foreign affairs department that is to be approached, the interposition of the permanent delegate may seem like a sheer addition of extra machinery without gain. But if other departments of national governments are to be approached, the delegate may be a valuable channel, failing which the Secretariat might have to work through the department of foreign affairs. The delegate may be valuable in speeding up these departments and coördinating their activities relating to the League, and, indeed, he may be valuable in speeding up the department of foreign affairs in its action relating to the League. Upon the utility, actual and potential, of the permanent delegate in this connection seems to depend, to a large extent, his future; for this is his peculiar function.

The misgivings of the Swiss government by reason of the development in Geneva of a second diplomatic corps rivaling that in Berne, its alleged displeasure at references to "the minister to Geneva," and similar feelings on the part of the people of Berne, if not of Switzerland generally, need not be discussed here. Where a minister in Berne sets up a branch

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office in Geneva, or even moves down there himself, the situation is bound to occasion surprise. But the Swiss government has been most generous in its attitude toward the permanent delegates, doubtless feeling, as any student of the problem must feel, that the uppermost question is that of whether these delegations minister to the successful operation of the League.

On this central issue, beyond what was said above, two contrasting pictures have been painted, and that by the same person, namely, one of the permanent delegates. The delegates are, he said, in a very definite manner, and in a pronounced degree, pro-League. They believe in the League and its work and desire to support and contribute to the success of that work. This is, probably, quite natural, but none the less important. On the other hand, he said, these delegates are able, and find it necessary, to exercise a restraining influence on the Secretariat and League conferences and commissions, in view of opinions and policies back home in member states. They must bring the facts of practical politics to the notice of slightly utopian League organs and officials. Both of these pictures seem quite accurate, the former no less than the latter, although the particular delegate who drew them evidently felt that the restraining influence of the delegates was salutary and their pro-League attitude possibly open to criticism. Taken together, they seem to constitute a rather important endorsement of the work of the permanent delegate. It is understood that the Secretary-General expressed himself, some years ago, as of the opinion that the delegations were very useful to the League; it is understood that he has, more recently, been impressed rather with the services which the delegations render to their home governments.

The situation in any federal union with respect to relations between the central government and the member state is a difficult one. Representation in policy-forming bodies and the presence of individuals from the states in the executive and administrative services is not quite sufficient to satisfy all the needs of those states for contact with the federal government.

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That no formal delegations from member states have been set up in Washington, Berne, Berlin, or other federal capitals means merely that makeshifts of one sort or another are utilized in their stead. While the situation is not by any means identical, the presence of dominion and colonial delegations in London may be cited as shedding further light on this problem. All sorts of compromises between central authorities and member states, and among member states themselves, must be adjusted continuously in any such complicated system as a federal union. Perhaps it remained for the League of Nations, or its members, to devise the appropriate institution for that purpose.

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A NOMENCLATURE IN POLITICAL SCIENCE*

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PART I. INTRODUCTION

Confusion reigns almost supreme in the field of political science, particularly when the meaning of terms is involved. Some of our most commonly used words have so many meanings, shades of meaning, and connotations that hearers and readers are frequently at a loss as to the meaning and significance of terms used unless the speaker or writer defines them as he uses them. A cursory examination of the term "state" brought to light no fewer than one hundred forty-five different definitions, even though only a few writers were included who might be classed as radical. Less than half of the definitions were in general agreement. Even this statement is based on the assumption that when the same words were used by two writers they were used to mean the same thing; and I doubt whether the assumption is entirely justifiable. Furthermore, "state" is not the only term in political science which is defined in multifold ways. A similar situation was found when others, especially "law," "government," "political," "administration," were investigated.

The process of communication between political scientists, as well as between these scientists and laymen or between laymen and laymen, comes to be a guessing game. Consciously or unconsciously, it is suggested, we are spending much of our time guessing what the sender means when he uses even technical words.

Take, for example, our own situation. Do you know what I mean by the words and terms which I have been using? Or have you been guessing? Do you know whether you have successfully guessed the meanings I have tried to put into the

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terms used? What assurance have I that you, individually or collectively, have been successful in your guesses? When my colleagues ask me questions concerning the system of symbols outlined below, am I not continually guessing as to the meaning and significance of the words used by them in their questions? Are not most of us attempting to play this guessing game? It seems to me that such is the case, even though we frequently act as if we understood each other perfectly. Have we for so long a period acted on the assumption that we understand, that we have forgotten (on many occasions) the guessing game?

This confusion is looked upon differently by various groups and individuals connected with the field of political science. These may be divided roughly into three classes. In the first place, there are those who are, in general, indifferent concerning this problem. They are, perhaps, too busy. I suppose the Hopi Indian does not care whether there is one definition of "state" or one hundred forty-five. It does not affect his life and actions to any appreciable extent. This position might be called the Hopi position. And yet I would be courteous to this Indian tribe which has so many admirable traits; let us therefore call this position the indifferent one.

The second class consists of persons who enjoy the confusion and profit thereby. The demagogue, disliking responsibility, flourishes under a régime in which terms are defined in various ways. He can use them loosely and with assurance that there is little or no accountability. Propagandists, many reformers, and even some teachers seem to enjoy this situation, as well as a considerable number of politicians and government leaders. They can say one thing and mean something else. Have these and others like them handicapped the development of political science?

The third class includes those who look with considerable apprehension upon this confused situation and this game which involves so much of what might be called "probable error" or "chance." This group would find a way out of the chaos.

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Remedies are to be discovered or created. These persons are also interested in any program that will increase the chances of successful guessing, or will promote more accurate thinking on the part of men and women working in the field of political science. This third group would insist on responsibility for what is said or written. They feel that to ignore the problem is not to solve it. They would be understood, and they would understand. This paper is written in the hope that it may be of assistance to men and women who belong to this group of people.

Little progress was made by man, it is suggested, until he became conscious of tools. The club, the knife, the arrow, and the saw, as well as words and measuring devices, aided in the building of civilization. With the development of our culture, these tools and instruments, as well as the technique accompanying, were refined and their use extended. In this march of mankind, nomenclature is a tool which is and has been used.

At one time or another, men in other branches of knowledge have had to face this problem of terminology. Some have perhaps thought that other sciences have always had their systems of symbols and special nomenclature; but such is not the case. Once confusion reigned in their work even as it now reigns in ours. Interesting indeed are the stories of the origin and development of systems of terms and labels in the various fields of knowledge.

The alchemists, biologists, chemists, and mathematicians have seen their symbols and systems develop and expand. The alchemists used symbols extensively. For example, "the astrological signs for the sun, moon, and five planets were used to indicate the seven metals."[1] There were signs for the various substances and pieces of apparatus in common use. "To indicate operations, symbols were extensively employed." Visualize the complications in the biological sciences had not Linnæus or one of his successors put forward such a system

[1] James C. Brown, *The History of Chemistry from Earliest Times* (2nd ed.), 153.

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"as a substitute for the clumsy method of naming plants and animals previously used among naturalists."[2]

Of chemistry, F. J. Moore says: "In 1787 the results of their deliberations [Guyton de Morneau, Lavoisier, Barthollet, and Fourcroy] were published under the title of *Méthode d'une Nomenclature Chimique*. This work did away with many of the fanciful and arbitrary names previously in use, and substituted such as were based on chemical composition. Speaking broadly, it is hardly too much to say that it laid the foundation upon which our modern international nomenclature now stands."[3] In addition, Moore says: "He [Berzelius] did much to facilitate all chemical discussion and calculation by inventing our modern alphabetical chemical symbols, which were entirely new with him. . . . ."[4]

The symbols + and — in mathematics were not used in the treatment of algebraic expressions until the sixteenth century.[5] William Oughtred (1574-1660), in 1628, introduced the symbol :: for proportion.[6] Thomas Harriott (1560-1621), who helped survey and map Virginia while accompanying Sir Walter Raleigh, used for the first time the symbols > and < for "is greater than" and "is less than," respectively.[7] Leonhard Euler (1707-1783) introduced Σ to signify "summation."[8]

In jurisprudence, attempts have been made to develop a special nomenclature which might be accepted. The late William N. Hohfeld, of the Yale Law School, made a contribution to this movement. "Right," "privilege," "power," and "immunity" were analyzed and related from two standpoints—jural opposites and jural correlatives.[9]

[2] James C. Brown, *op. cit.*, 310.
[3] *A History of Chemistry* (in International Chemistry Series), 52.
[4] *Ibid.*, 104.
[5] D. E. Smith, *History of Mathematics*, 330.
[6] *Ibid.*, 494.
[7] *Ibid.*, 389.
[8] Florian Cajori, *A History of Mathematics*, 232.
[9] Walter W. Cook, "Hohfeld's Contributions to the Science of Law," 28 *Yale Law Journal* 721 (1919). See also 23 *Yale Law Journal* 16 (1913) and 26 *Yale Law Journal* 710 (1917).

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Many modern scientists feel justified in using systematized symbols and special nomenclature in order that they may promote accuracy of thought, rapidity of action, and greater clarity of understanding. These systems were not handed down from Mount Sinai complete and perfect; each one was, in the beginning, fragmentary and has been modified. Few, if any, are looked upon, even now, as complete.

These programs are of significant value today. The chemists would not think of abandoning their systems of nomenclature; neither would the mathematicians or the physicists do without their special terms. But the fact that other scientists use special symbols, arbitrarily defined, is in itself no justification for our using them, even though they are of great value in these other fields.

Today, in the social sciences, utility is sometimes looked upon as a major criterion in accepting or rejecting a proposed instrument or method. An important question is: Does the instrument have utility for me in my work? If so, I want it; if not, don't bother me. Let those use it who will find the method or instrument useful. I would not leave the impression that I feel utility to be the only criterion, but I do feel that it is a very important one.

A very brief analysis of this measuring device, utility, will be of help in approaching and evaluating the problem of symbols in political science.

Using a specialized (sp) set of symbols, I want to present a simple and quite crude formula for utility as a measuring device. The formula is:

$$\frac{c + a + v + r}{e + t} = UQ$$

Notation

c	clarity
a	accuracy
v	volume or quantity of results obtained
r	relationships
e	energy expended
t	time consumed
U	utility
Q	quotient

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This is neither a full nor a complete formula, but it is sufficient for our present needs. By applying it to various methods or instruments, one is able to establish in a fairly satisfactory manner the relative utility possessed by the various methods under consideration—the larger the UQ the better, relatively speaking, the method.

As the problems are seen more clearly, or as there is greater accuracy in the work done, or as the quantity of results is increased, or the number of relationships is increased, by using a first method, other factors remaining constant, it is said that the utility of the first method is greater than the utility of the second. On the other hand, if either the amount of energy expended is lessened or the amount of time is decreased, or both, in the use of the first method, other factors remaining constant, the conclusion would be drawn that there is more utility in the former method than in the latter.

Further to illustrate the use and value of this simple formula: if method 1 presents the problem twice as clearly as method 2 and the other factors remain constant, the resultant UQ would be larger in the formula for method 1 than it would be for method 2. The same situation arises if a, v, r, or any combination of c, a, v, and r, appear to be larger in method 1 when compared to method 2. Consider the situation when

$$\text{Method 1} = \frac{1c + 1a + 10v + 6r}{1e + 5t} = UQ, \text{ and when}$$

$$\text{Method 2} = \frac{1c + 1a + 16v + 6r}{1e + 4t} = UQ.$$

By cancelling like units which appear in both formulæ, we find that, speaking generally, method 2 possesses twice the utility possessed by method 1. By inspection, without cancelling, it is readily seen that method 2 has more utility than method 1.

This seeming digression for a consideration of utility is indulged in to the end that we may the better approach the

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utilitarian aspects of special nomenclature in political science.

During the last three years, a special system of terms, labels, and symbols has been consciously and deliberately built up in the field of political science which has possessed, and today does possess, utility—particularly when this system is compared to other methods used in the field. Both *t* and *e* have been definitely reduced, on the one hand, and, on the other, *c* and *a* have frequently been increased. The quantity of relationships seen has also been increased in the consideration of some of our problems. Whether or not *v* has been increased, I do not know, but I do think that it has not been decreased. If *t* alone showed a favorable change, I think many in our field would be interested in this method. A small group of us have found it to possess, comparatively speaking, utility. Like the systems used in other fields, this one is not a finished product; it is only a beginning.

Before entering upon a presentation of the system of symbols we have been using, I wish to make it clear to all concerned that I am not playing the rôle of a propagandist for any system or any method. Although the system so far developed has been very helpful to the small group using it, I am but slightly concerned about whether others use it. Furthermore, the symbols used in this partially developed system may not all be of value in the study of each phase or section of political science. Out of the forty-odd now used, eight may be of value to men working in the field of administration; while only two of the eight, and eleven others, may possess utility for those working in international relations. Twelve entirely different ones may be helpful in the study of constitutional law. All of the forty-odd symbols possess utility for some working in the field of theory, partly because of the theorists' interest in synthesis of analytical fields, in relations and relata. Again, utility might be the basis upon which each determines whether the system shall be considered at all and, if so, which particular symbols possess value for the individual or section concerned.

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Back of, or underneath, our consideration of this problem of nomenclature are certain philosophical phases which we neither overlook nor ignore. It has been found convenient and helpful to take into consideration the position of the idealists.

Perhaps there is an absence of complete agreement, but some day, if we continue the search, we hope to find the answers to some of our questions and the solutions of some of our problems. Some of the symbols are at present undefined. We may understand something of a certain man's idea about law, but that does not indicate that we know the meaning of the term.

Some symbols are thought of as magnetic poles, themselves incompletely known, drawing unto themselves certain ideas or activities. There is utility in placing a label over the pole or magnetic field, even though we may not at this time be able to define either. We hope sometime to be able to understand both the pole and the field.

If the use of the idea of a magnetic pole does not appeal to my readers, perhaps the use of flags or banners or placards in a great convention will present more clearly the manner in which some of the symbols are here used. In a convention, a distinctive placard or flag may be used to indicate the meeting-place of a delegation or the area of the hall which is to be occupied by a certain group. A flag, a banner, or a placard does not completely define the delegation or the group, but a system of flags, banners, or placards possesses utility for the convention, the delegations, the messengers, the press, and the onlookers or visitors. The system not only eliminates some of the confusion on the convention floor, but simplifies many problems involving location of delegations and others concerned.

The scientific side of our work is also taken into consideration. Accuracy, clarity, precision, and utility are to be promoted in so far as possible without seriously interfering with other valuable programs. A seemingly paradoxical situation

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appears in this connection. On the one hand, it is urged that no two symbols should indicate the same position, nor should one symbol or label be used to indicate two or more positions. On the other hand, it is almost necessary, and is certainly quite desirable, that the same symbol stand for more than one position. There are too few labels to satisfy even the political scientists, much less the social scientists or the entire group of scientists. One would hardly maintain seriously that the fields of knowledge first using symbols should have a monopoly on the use of them. There is no sound or sufficient reason why the letter *H* should not be used in both physics and political science, or the letter *O* by both the chemist and the political scientist. The accountant ought to be able to use the letter *A* as well as the political scientist. And the political scientist is able to use the symbol *a* in several ways, providing one thing is known (and this applies equally to all that has been suggested in this section), namely, the code word of the system involved. The symbol *H* has a definite and significant meaning to the chemist as soon as the code word, chemistry, is stated or written over the formula containing the symbol *H*. As soon as the code word, physics, is known, the symbol Ψ (psi) has a significance for the physicist. *A*, *L*, and *P* possess meaning to the accountant as soon as he is given the code word, accounting. The same holds true for the political scientist who is familiar with this nomenclature. The symbols can be used in one way or in one system known as the general, and they can be used in any number of special ways without confusion, as long as code words are clearly shown along the way. If no code word appears other than political science, it is assumed that the general system is being employed.

Another aspect of the scientific approach to the use of symbols in political science is classification. In this connection, symbols are thought of more frequently and more generally as canopies without side walls, rather than as tents whose walls come to the ground. They are used to designate certain general or specific areas without becoming involved in the prob-

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lem of boundaries. This is particularly true of such symbols as α, β, and γ—the significance and meaning of which will be discussed presently. These symbols possess utility when one is attempting to work scientifically in political science.

Not only have we taken into consideration the idealist and the scientist; the artist and the teacher must also be considered. Art is an important factor as well as precision and exactness. Presentation of materials, methods, results, and conclusions is important if the activities in this field are to be seen clearly and understood adequately by others within the field as well as by those outside. Positions must be well rounded and fully appreciated. Flexibility and, at the same time, fine or minute variations are almost essential if the receiver is fully to comprehend the sender's problems. Real teachers are artists in the field of presentation.

Imagination must not be overlooked as we approach this system of nomenclature. To help the idealist, the scientist, or the artist, a system ought to be of such a nature that it stimulates rather than deadens one's imagination. Both the operator and the receiver should have their attention continually called to the possibility of the existence of other methods, other instruments, other data, and other results, not to mention other qualifications and conclusions.

Looking back over our school days, I notice that we first learned the words and the numbers of the language, then we learned how to count and spell, and finally we were introduced to algebra and advanced problems in multiplication and division. So with this system of symbols, or this language in political science; before one can add or subtract, construct equations, see relationships, or find errors, it is necessary, in most cases, to learn positions and numbers. This aspect, plus learning how to add and divide, might be called first-grade work. After the completion of the first-grade work, the students enter upon the work of the second and third grades. Meanwhile let us come to understand as clearly as possible the meaning or place of a few of the more important symbols used

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in political science. They are used in research, in teaching, in discussion, and in philosophizing.

The Greek letter alpha (α) has come to stand as a canopy over what is now looked upon by some in our field as a collection of fundamental problems. It is one of the bundle or canopy symbols. These more or less basic factors on which the structure of political science has been reared are called, by some, assumptions; by others, postulates or functional propositions; by others, major premises; and by still others, primary articles of faith. They are axioms or self-evident truths to the mathematician, God-given laws to the theologian, and sound business propositions to the merchant or banker.

The alpha field and alpha problems are generally accepted without serious consideration. All too often we build on them without analyzing them. We assume that we exist, that there is a world, that we can communicate with and understand each other, that there are methods which we can use and problems which we can attack, and that certain things are necessary and others harmful. We even assume that we know good from evil, right from wrong, and sound from unsound methods and conclusions. Few indeed are the problems in political science that can be studied today without considering at an early stage this whole alpha factor. Some of us feel that it should be considered first in the study of any problem in the field of political science. At the present time, a number of us are attempting to make a careful analysis of the alpha problem.

The Greek letter beta (β) also stands as a canopy over what might be listed as a second collection of problems in political science. All the problems and activities which have to do with methods or instruments used in the consideration of a problem are known as beta problems, and the portion of the political science field which they occupy is called the beta field, or the beta problem. After alpha comes beta, and after a consideration of bases comes an analysis of instruments and techniques. This science has developed to such an extent that we have a number of instruments and methods which are used in attack-

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ing our problems. Political scientists as well as carpenters have tool-boxes; and we have in ours a number and a variety of tools, even as the carpenter has in his. These tools, methods, and instruments need to be analyzed, classified, and evaluated from various angles. Some are more appropriate at one time, while another or others may be very helpful at another time, or in connection with another problem. Before one proceeds very far with the consideration of a problem in political science, the beta field or factor needs to be taken into consideration. The present article might well be called, "An Introduction to a Phase of the Beta Problem in Political Science."

After considering the alpha and beta fields, one might say that the natural or the reasonable thing to do would be to consider the control factor. Beta factors need to be controlled; political activities and policies, as well as the various devices established at one time or another, may well be considered from the standpoint of supervision or control. Both societies and governments, as well as individuals and special groups, almost continually face the problem of control. Instruments as well as agents are looked upon by many with disfavor whenever they operate, or attempt to operate, in an unrestrained manner. There are some who feel that this might be called the third problem in political science. The Greek letter gamma (γ) stands for this problem of control. The symbol within the gamma is the factor being controlled, or at least it indicates that an attempt is being made to control the unit represented by the symbol within the gamma.

The letter *h* stands for a very important unit in political science and in the study of the problems involved in this field. But before proceeding with an explanation of this symbol it will be helpful, I think, to note the symbol *h* when the code word is physics. Professor A. S. Eddington, in his splendid book, *The Nature of the Physical World,* tells us: "The amount of energy coming away from the sodium atom during any one of these discontinuous emissions is found to be $3.4.10^{-12}$ ergs.

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This energy is, as we have seen, marked by a distinctive period of $1.9.10^{-15}$ secs. We have thus the two ingredients necessary for a natural lump of action. Multiply them together, and we obtain $6.55.10^{-27}$ erg-seconds. That is the quantity *h*.''[10] And a little later on he says: ''The mysterious quantity *h* crops up inside the atom as well as outside it.''[11] We, in political science, can say the same thing of our *h*. It is a mysterious quantity, and one about which we know very little. This symbol may be one of our so-called magnetic poles. We certainly hope that some day we shall know more about it. *h* stands for the human organism, in all its splendor and in all its degradation. The Psalmist of old cried out: ''What is man that Thou art mindful of him?'' The question, what is *h*, still remains unanswered. Graham Wallas has given us his conception of *h*, but it is only his idea and is symbolized as *h* [Wallas], not as *h*.[12]

Before proceeding further with either an analysis of *h* or the presentation of other symbols, it will be well to note certain of the mechanical and auxiliary ones.

\+ carries both the meaning of positive and of addition as in mathematics. One should remember that in algebra the sum of a+b+c is a+b+c. Likewise in political science one might find that a man's vote was controlled by three laws plus five dollars plus two men [3W + $5 + 2h].

— carries both the meaning of negative and of subtraction as in mathematics. It should be noted that the — sign also indicates direction, i.e., that one is to go in the opposite direction from the one in which he has been going.

I stands for *inter*, between, together, or among.

= as in mathematics, this symbol has the meaning of equals, or is equal to.

÷ indicates various aspects of classification, to classify, to break into parts of classification per se.

[10] P. 183.

[11] *Ibid.*, 190.

[12] *The Art of Thought*, synopsis of Chap. I: ''. . . . the human organism as an imperfectly integrated combination of living elements, each of which retains some initiative of its own, while coöperating with the rest in securing the good of the whole organism.''

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$\mathcal{f}$ carries the meaning of the function of, or function. (It is called function.)
[] indicates parenthesis, especially to designate subscripts. (They are called brackets.)
$>$ indicates decreasing when used with one, and means "is greater than" when used comparatively.
$<$ indicates increasing when used with one, and means "is less than" when used comparatively.
:: indicates proportion, as in mathematics.
$\overline{3}$ stands for symbol, label, term, or arcanum. (It is called arc.)
X stands for the unknown item or factor. (One of the major problems in political science is to cut down the extent and scope of this X item.) In using X in connection with classification, it should be recognized that the X class is, first, to indicate that the classification is an open one, and second, to contain the items which cannot be placed in other classes. It is generally wise to have an X class no matter how minute the classification may be.

The quantitative significance of a symbol, $\overline{3}$, is expressed both generally and particularly by means of certain auxiliary symbols, as $\overline{3}$).

Each of the primary and secondary symbols represents one unit of the idea or factor represented by the given symbol. Two or more units of a term are expressed by placing the second half of the parenthesis, [)], immediately following the symbol $\overline{3}$. When one wishes to indicate a relatively large number of units, two or three of these are placed in the same posterior position. Thus, many human organisms = h)); a great many human organisms = h))).[13]

Particular or definite quantities are expressed by the use of numerical prefixes, as $3h$ or $74h$. All, the totality of, or the summation of, is expressed, as in mathematics, by the Greek letter sigma [Σ].

Qualitative phases or aspects of a symbol are also expressed both generally and particularly. The general qualitative classification is represented by a system of exponents. These may be used as extensively as is thought desirable by various students. Up to the present time, nine qualitative positions have

[13] This development of quantitative flexibility was suggested by Mr. Walter T. Bogart, of the political science department of the University of California at Los Angeles.

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been used: four positive, four negative, and one general. The four positive exponents indicate four general, positive, or favorable qualitative classes. The exponent 2 indicates that the quality of the situation under consideration is slightly above the general class. The exponent 3 indicates that the situation represented by the symbol is above the general class, 4 that it is considerably above, and 5 that it is the highest. To illustrate: h^2 means that this h is slightly above the general class of h); h^4 means that this h is considerably above the general class of h); h^5 means that this h is the highest or finest type of h.

The four negative classes are represented by four negative exponents: –2, –3, –4, and –5. The exponent –2 indicates that the symbol accompanied represents a situation slightly below the general level or class of units represented by the symbol; –3 shows that the symbol is below the general class; –4 shows that the position is considerably below; and –5 that it is the lowest or poorest.

Both h without any exponent and h^1 indicate that h is being considered without any special reference to qualitative factors.

The exponent zero $^{\circ}$ indicates that the $\bar{3}$ so notated is being considered a constant, while the exponent minus one $^{[-1]}$ shows that the $\bar{3}$ so notated is being considered a variable.

A distinction is made, on the one hand, between the concrete, the material, or the physical, and, on the other hand, the abstract, the spiritual, or the mental. This is done by means of underscoring the symbol when the emphasis is to be placed on the material, and super- or over-scoring the symbol when the emphasis is on the spiritual or intellectual side.

The particular qualitative classification is represented by placing appropriate words or labels in brackets in the subscript position. Numbers may be substituted whenever a term or idea becomes sufficiently important to warrant a special means of representation. Examples of this particular qualitative representation are:

$h_{\text{[U.S. citizen]}}$, $h_{\text{[male]}}$, $h_{\text{[soldier]}}$, and $h_{\text{[yellow]}}$.

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It is perhaps neither wise nor expedient to present any more of the symbols at this time, but in a concluding installment the remaining ones in this nomenclature will be set forth as clearly as possible. There are about forty in all to be considered. In addition will be shown some of the elementary uses to which they can be put. Until the second article is presented, I hope that the reader will be open-minded and sympathetic toward the experiment.

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Government by Special Consent. American political theorists have long assumed that the various governmental units composing the United States act only in accordance with the powers bestowed upon them by constitutions and conforming laws of their respective jurisdictions. But in recent years they have received an electric shock through the development of "government by special consent." Basically, the new principle means that a supervisory authority can in reality exercise rights over persons and property not brought under its wing by the constitution under which it operates—provided certain public agencies or private parties agree to the extension. This practice, which has not yet received philosophical treatment, has enabled the several governments of the Union to conquer new worlds without resorting to the long, difficult, and unwieldy process of constitutional amendment. The novel method of transfer by agreement is both rapid and flexible. But why, one is led to inquire, do independent bodies surrender portions of their "sovereignty" to other groups? Certainly not through mere altruism. They do it "for value received," be it financial aid, convenience, advertising advantages, or other rewards. In all ages, from biblical days to the latest moment, birthrights have been sold for "pottage."

Financial pottage needs no introduction to most American observers. They are well aware that various states in the Union, for example, have agreed to accept national control over their internal roads, educational affairs, forestry, agriculture, and other matters in exchange for monetary assistance from the federal government.[1] Such transfers of authority for cash are of mutual benefit. In the first place, the cost of governmental services is mounting, and as a result the states enjoying slight economic strength find themselves hard pressed. In the second place, they cannot always secure the desired revenue from private property at hand, for certain vital sources of taxation are national rather than local in character. Thus the incomes of great corporations engaged in wide operations from Eastern headquarters cannot be touched by the smaller political units in other parts of the country.

[1] A. F. MacDonald, *Federal Aid: A Study of the American Subsidy System* (1925).

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If, then, states require large sums which they cannot obtain from resources under their jurisdiction, they naturally welcome an opportunity to fill their coffers from congressional appropriations. On the other hand, the federal government waxes fat by the system, for it is thus given an opportunity to intervene in the work of states lending their approval to federal-aid projects. With the fruits of a continental experience at its command, the administration at Washington is often in a position to introduce the best practices from coast to coast and avoid much duplication and waste.

Direct financial inducements are not always necessary to secure the surrender of power by one political unit to another. The convenience of uniformity in the laws dealing with a given matter may be sufficient in itself to bring about the transfer of authority. Such is the case in the field of aviation.[2] Under the Air Commerce Act of 1926 the United States Department of Commerce can impose license requirements only upon aircraft and airmen engaged in interstate air commerce. In theory, the states are supreme in regard to air traffic within their respective boundaries. But the advantages of having a single standard licensing system for the whole country have become apparent. Accordingly, nineteen states have specifically provided that all aircraft and airmen coming under local control must be licensed by the federal government. Nine others require such national licenses for all commercial operations; while six more make it optional whether planes and airmen hold state or federal licenses. In summary, then, thirty-four states recognize federal aviation licenses as valid for both interstate and intrastate flying. Of the fourteen states outside this class, eight have no licensing systems whatever; so that there are only six states—Arkansas, Connecticut, Florida, Kansas, Massachusetts, and Pennsylvania—which have refused to grant control over local flying "by consent" to the Washington government.

In addition to the airplane, there are feathered denizens of the sky whose nation-wide movements also call for attention from the federal government. Once more the convenience of uniformity has been sufficiently powerful to cause a transfer of authority. Under the terms of a treaty between the United States and Canada, the two countries are made joint wards of migratory birds. The President of the United States, by the Migratory Bird Treaty Act, may make effective

[2] United States Department of Commerce, Aëronautics Branch, *State Aëronautical Legislation and Compilation of State Laws* (Sept. 1, 1929).

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a variety of rules as to closed season and other modes of conservation which are enforceable throughout the land. But the specific right of the several states and territories to enact supplementary statutes providing equal or greater protection for birds than the federal prescriptions has been recognized by Congress.[3] Legally, then, a system of concurrent jurisdiction in which national and local political units are each to play a rôle is contemplated. But most legislatures meet every two years, while the President of the United States is continuously at his post. Consequently, confusion results in the states if the President promulgates federal measures more stringent than their own laws at a time when their legislatures are not in session, and hence are unable to bring their books into harmony with his orders. To obviate this difficulty and secure the blessings of uniformity, twelve states have passed laws automatically making certain federal bird regulations binding in local affairs.[4] Concurrent jurisdiction has been, through "special consent" of a number of localities, wiped out and replaced by centralized control from the capital at Washington.

The development of government "by special consent" has made possible a desirable uniformity in the laws covering the several fields treated above. However, certain matters are by nature local rather than national. Such affairs do not lend themselves to the type of integration we have just been discussing. Quite the contrary; they require decentralization. And "special consent" can win its victories in either direction. For example, the Supreme Court of the United States decided in 1896 that, in effect, each state owns the game within its borders and can prohibit its export. Taking advantage of this situation, many states proceeded to safeguard their own game animals as best they could.[5] But while local laws proved adequate for internal control, they were quite powerless in cases where game passed in interstate commerce—the domain of the federal government. Rather than set up a separate remedial system of national laws, Congress passed the Lacey Act "to enable the states by their local laws to exercise a power over the preservation of game . . . . which without

[3] United States Department of Agriculture, Bureau of Biological Survey, *Service and Regulatory Announcements* (issued September, 1930).

[4] Special letter from the Bureau of Biological Survey, December, 1930, to the author.

[5] Jenks Cameron, "The Bureau of Biological Survey" (Institute for Government Research, Service Monograph No. 54), pp. 72-75.

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that legislation they could not exert."[6] The act made it a federal offense for any person to deliver to any common carrier for transportation, or for any common carrier to transport in interstate commerce, game killed contrary to the laws of the state of its origin. When game arrives in the state where it is to be consumed, sold, or stored, it also becomes by act of Congress subject to the laws of said state "to the same extent and in the same manner as though [it] had been produced in such state or territory."[7] By special consent, then, the United States government has relinquished its legislative power over interstate game shipments, leaving them subject to local laws from start to finish.[8]

Government "by special consent" does not always involve the acceptance of the statutes of one political unit by another political unit. The same result can be achieved in a different manner, namely, by vesting one individual with the authority to execute both sets of laws. The person so commissioned is, in theory, following the dictates of two governing bodies; but in practice he so completely integrates the work of both that the border line between them disappears. The situation may be illustrated by particular reference. By virtue of section five of the Food and Drug Act, the United States Secretary of Agriculture can commission state health, food, and drug officials as officers of the Department of Agriculture for the enforcement of the federal act. In addition, inspectors and other agents under the direction of the above commissioned officers are given credentials as representatives of the Department enabling them to secure samples from interstate shipments and otherwise to participate in national activities.[9]

This arrangement is of mutual advantage. From the standpoint of the states it is a decided benefit, for it permits local personnel to put their hands on interstate shipments which would otherwise be out of their reach under the Constitution of the United States. Thus it greatly tightens up law enforcement. If an inspector vested with both national and state authority pounces upon a batch of goods, there is no escape. If he finds a state law violated, he applies it; if there has been an infraction of federal law, he brings it into play. In neither case

[6] 184 N.Y. 126

[7] Pennsylvania refuses to accept this grant of authority.

[8] For similar legislation in international affairs, see section 527 of the Tariff Act of 1930.

[9] *United States Daily*, October 18, 1929.

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need he communicate with any other "police" organization with a view to placing the matter in different hands. He can strike, and strike quickly. Red tape and the over-night removal of suspected goods are well-nigh eliminated. On the other hand, the government at Washington also profits by the system, for local men acting as national agents uncover many invasions of the federal Food and Drug Act which would escape the attention of a separate and necessarily small force of national field men acting alone.

If the advantages of vesting both federal and state authority in a single individual are so great in the field of food and drug inspection, may they not be equally impressive in other lines of activity? A positive answer can be rendered in the case of bird and game administration. On December 1, 1930, there were 642 state game wardens holding, by their own consent, commissions from the United States Bureau of Biological Survey as federal game wardens.[10] Here also we find that a dual authority serves to prevent the escape of culprits who might readily slip through the loopholes resulting from the political division between the states and the federal government. Perhaps additional instances of combining local and national credentials at one and the same time could be unearthed if a detailed survey were made of the machinery of our government, but the two cases cited fairly represent the possibilities of this practice.

The above examples also illustrate the manner in which cognizance is taken of local constitutions prohibiting state employees from holding "offices" under the federal government. The food and drug inspectors possessing local and national commissions are not paid for their work in enforcing United States regulations. According to Mr. Walter S. Frisbie, of the Food and Drug Administration of the Department of Agriculture, this absence of compensation has been generally interpreted in practice to mean that the state inspector holding federal credentials is not an incumbent of a federal "office." Now in the case of game wardens the reverse is true, since a salary is paid to the local person acting as a federal agent. The salary feature attached to the latter position makes it a federal "office." Consequently, dual authority can be vested in game wardens only in states which do not definitely forbid state officers to hold "offices" under the national government.

Up to this point we have been dealing with instances in which one

[10] State wardens are free to refuse federal commissions.

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political unit surrenders part of its "sovereignty" to another, or where the jurisdiction of both is combined in the same individual. It remains to be seen how private parties may voluntarily bring themselves under the sway of a government which normally has no power over them. An interesting case of the latter type is the federal inspection of flying schools.[11] In theory, such institutions are local in their nature and normally exempt from regulation by the United States government. But the Secretary of Commerce, under congressional sanction, has invited flying schools to come under the wing of the national authorities "by special consent." The inducements offered are twofold. First of all, schools applying for federal approval are rigidly compared by the Department of Commerce with a theoretically ideally equipped organization. They are then rated on the basis of their conformity with this ultimate standard and are granted the privilege of employing such ratings in their advertising. Needless to say, inspection by the federal government carries great weight with the public and is often employed as a selling point by approved schools. The second inducement takes the form of a grant of extra credit toward federal aviation licenses to students of certified schools. Balancing the advantages of federal inspection against the bother of supervision, forty-one flying schools had applied for and received national ratings by September 15, 1930.[12]

Patterned after the regulation of civilian flying schools through the "special consent" of the interested parties is the federal supervision of airports. Under existing law, "the Secretary of Commerce will rate airports of the United States as to their suitability upon application of the owners of these facilities." By November 1, 1930, only two airports had been officially rated, and both of these had received an A-1-A classification, the highest obtainable.[13] Naturally, an airport does not wish to advertise its defects, and it is to be presumed that inferior fields not eligible for an A-1-A rating will not apply for federal inspection. But the superior airports capable of being registered as A-1-A are induced to seek federal regulation because of the advertising value attached to national approval. Indeed the mere mention of the fact that the two A-1-A airports are located at Denver, Colorado, and Pon-

[11] United States Department of Commerce, Aëronautics Branch, *Air Commerce Regulations, School Supplement.*

[12] United States Department of Commerce, Aëronautics Branch, *Aviation Schools Having Approved School Certificates,* Sept. 15, 1930 (Mimeographed).

[13] *United States Daily,* May 10, 1930.

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tiac, Michigan, suggests to the flying public that these two fields ought to be included in a transcontinental itinerary. And anyone desirous of finding out in advance what to expect if he lands on either spot can do so by reading the description of a standard A-1-A airport printed in the "Airport Rating Regulations," to be obtained from the Department of Commerce, Aëronautics Branch.

In the field of mine safety, as in that of aviation, the regulatory powers of the federal government have been extended by the "special consent" of private parties. The Bureau of Mines of the Department of Commerce, through its Pittsburgh experiment station, has formulated a series of safety standards for apparatus and explosives designed to prevent needless accidents underground. Upon payment of a small fee, the station will test equipment sent to it by any manufacturer to see whether it conforms with the federal requirements. If upon examination such paraphernalia are found satisfactory, the manufacturer is granted the privilege of marking them with a seal stating that they have been approved by the United States Bureau of Mines. Thereafter goods so approved are technically known as "permissible" materials and are listed in government periodicals in catalogue form. There is no legal compulsion upon any manufacturer to seek federal approval, but, since a number of mine owners have come to realize that "permissible" materials greatly improve the safety of their operations, they favor such goods in their purchases. A Bureau of Mines official recently stated orally that perhaps ten per cent of the country's mines have, on their own motion, chosen to employ "permissible" devices. And one state, Utah, has seen fit to require the use of "permissibles" in local mines in certain circumstances.[14] Consequently, manufacturers of "permissible" items are at an advantage in the market catering to progressive mining interests. It is the desire to invade this market that stimulates producers to welcome federal regulation "by special consent."

Owing to the development of the theory of "government by special consent," political units are enabled to perform work that needs to be done without breaching the ancient constitutional walls with which they are surrounded. Where there is a will there is often a way, and "special consent" opens an attractive path. It permits the national legislative and executive departments to adopt statutes and rules which are automatically incorporated into local laws and *vice versa.*

[14] Utah Industrial Commission Orders, April 8, 1924, and February 21, 1930.

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The agents of one government are acting in effect as the agents of another. While such interplay violates the precious "integrity" of separate political entities, it is inevitable. If the organic society of today cannot steal under or around the old barriers erected between various governmental units, it must perish. The data already presented indicate that it has chosen the former course—to survive through ingenuity.

WILLIAM BEARD.

Washington, D.C.

The Publicity Division of the Democratic Party, 1929-30. Observers of the American political system have long recognized the difficult position of the opposition party as an effective critic of the legislative and executive policies of the party in power, especially in the interval between campaigns. Our constitutional practices result in the nomination of "available" men for the presidency, and in the rather complete elimination of the defeated candidate from a position of acknowledged party leadership. The methods and traditions which govern and control the procedure of Congress are hardly adapted to produce party leaders who can speak authoritatively for the minority. It is rare that the party out of power is cohesive, united, and ready to present and support an alternative program.[1] It is decidedly difficult, under normal conditions, to arouse public interest in the minority's position, save in the period which precedes an election. On the other hand, because of the great prestige attaching to the presidential office, and because of the elaborate methods of favorable publicity so highly developed by recent chief executives, the party in power is able to direct continuous attention to its policies and program.

The question of effective minority opposition concerns chiefly the Democratic party, since it seems probable that it will remain, for the most part, in the position of an opposition party. The lack of funds adequately to finance campaigns and the relatively insignificant press support given to the Democracy are factors which accentuate the difficulty. Shortly after the election of 1928, former Governor Smith indicated some of the handicaps facing his party between elections and recommended that the Democratic party at Washington develop the

[1] There is a concise summary of the present party situation, especially the lack of party responsibility and the reasons therefor, by Lindsay Rogers, in "Problems of Party Responsibility," in *The Future of Party Government* (1929), pp. 79-84.

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educational function of the minority party and adopt a constructive program, "rather than sit by and adopt a policy of inaction with the hope of profiting solely by the mistakes or failures of the opposition."[2]

Several months later, the chairman of the Democratic National Committee formally announced the creation of a permanent Executive Committee and the appointment as its chairman of Mr. Jouett Shouse, for many years well known in party circles.[3] In several addresses shortly after his appointment, Mr. Shouse, the originator of the plan, declared that a serious and sustained effort would be made toward the maintenance of three major activities, namely, organization, publicity, and research.[4] The importance of organization is, of course, generally recognized, and chief interest attaches to the publicity features of the new arrangement. On June 15, 1929, the appointment of Mr. Charles Michelson as director of publicity for the Democratic National Committee was made public. In making this selection, excellent judgment was displayed. Mr. Michelson, after much experience in newspaper work, had been from 1917 to 1929 the Washington correspondent of the *New York World*. He is a journalist of training and ability, by temperament and by conviction admirably qualified for the position.

It was soon evident that the director was to assume the offensive. During June, 1929, fourteen statements were released by the Publicity Division, and in the interval between July 1, 1929, and September 1, 1930, approximately one statement each day appeared—a total of 406, including clip-sheets.[5] Much interest has been manifested in the method of preparation of the various statements, and the charge has been made that they were the product of "ghost-writing." These charges require some qualification. The statements that have been prepared by the Division have been, in large part, the reproduction of

[2] His statement is in the *New York Times*, November 14, 1928. In a subsequent radio address he declared that "it has been the habit of the Democratic party to function only six months in every four years." *Ibid.*, January 17, 1929.

[3] The Executive Committee announced by Mr. Raskob on May 1, 1929, should not be confused with a committee of similar name which functioned in the campaign of 1928.

[4] On June 10, 1929, he said to the Jefferson Association of Washington that "what we propose to set up here is a business-like national headquarters that will function continuously . . . for the education of the people as to what is taking place in the conduct of their government by the party now in power. . . ."

[5] From July, 1929, to January, 1930, 196 statements were made public; from January to September, 1930, 210. No statements issued after the latter date were considered, it being assumed that the campaign of 1930 had then commenced.

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interviews with Democratic senators and representatives; about three-fourths, in fact, have come from Democratic members of Congress. The chairman of the Executive Committee has been responsible for the remainder. In some instances, of course, suggestions have been made to members that a statement upon a certain subject might be timely and valuable. A large proportion of the statements have been prepared personally by members of the House and Senate, and in those instances in which such members have merely talked to representatives of the Division and the interview has subsequently been prepared for publication, the manuscripts have been submitted for final approval before being published.

The subject-matter of the publicity is based, in nearly every instance, upon some question pending before Congress or upon some phase of the national administration. A large majority of the published statements—some 280 in all—have dealt with the Hawley-Smoot tariff bill. The range covered has been wide, including the controversial flexible tariff provisions, the rate structure, the purported attitude of the Hoover administration toward the bill, and replies to the contentions of the majority leaders. Many of these statements have been presented in the name of members of the House or Senate best qualified to speak. The tariff was before the Congress for many months; it remains, with some qualifications, an orthodox party issue; and it was foremost during the period when the Division was first organized. The other chief legislative and political issue, farm relief, received little criticism during the consideration and passage of the 1929 legislation; the number of statements devoted to that subject is very small. The operation of the act and some of the policies of the Federal Farm Board have incurred subsequent criticism. Other interviews have included general and specific comments upon the administration and its alleged failures, particularly upon the so-called "Hoover panic." Optimistic predictions were made concerning the results of the 1930 elections, but it is obvious that a real attempt has been made to confine the statements to political and governmental questions. Mr. Michelson has shown great skill in directing the preparation and submission of the publicity; many of the statements are of genuine political interest and are certainly welcome to those who believe in the rôle of the minority party as a critic of the party in power.

During the period under examination, statements were made by

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fifty-two persons, many party leaders participating in numerous separate releases. Senator Robinson, the minority leader, and his party colleagues of the Senate finance committee, Barkley, Simmons, Harrison, George, Connally, and Walsh of Massachusetts, have been especially active; while in the House, Representatives Garner, Byrns, McDuffie, Crisp, and Collier have assumed the chief burden. In addition, excerpts from speeches and interviews of Senators Brookhart, Capper, Couzens, La Follette, Norris, Nye, and Shipstead have been used. Only in cases where it seemed necessary for the Committee itself to speak have statements by Mr. Shouse been made public.

In providing for distribution, the accepted methods have been used, and the result has been a wide hearing. The statements are intended primarily for distribution to the Washington correspondents and to the various news agencies. A copy of each statement is sent to the members of the Democratic National Committee and to the chairmen of the various state committees. Each week, also, material is prepared for release to the weekly papers, and a news letter is sent out regularly to a list of daily papers which do not maintain Washington representatives. Weekly clip-sheets are widely circulated. Finally, the radio was used as an instrumentality of publicity during the tariff debates.

Not the least interesting feature has been the reaction of the official Republican leaders. At first, no doubt feeling secure after their sweeping victory of 1928, they were not inclined to take very seriously the work of Mr. Michelson's organization. It soon became evident, however, that they could no longer ignore the Democratic statements, which had news value and were highly irritating to the White House. Republican regulars, chiefly Senators Watson and Fess and Representatives Tilson and Wood, issued counter-statements denying and belittling the Democratic assertions. Subsequently, a Republican publicity director was installed. Fortunately for the Democrats, economic conditions were such that Mr. Michelson was able to force the fighting and to keep the opposition on the defensive. Latterly, there has been an unfortunate revival of some of the tactics of the 1928 campaign. It is now charged that the entire Democratic plan is a "Raskob plot" against the peace and dignity of the Hoover administration, and much hue and cry has been raised over the alleged attempt to "destroy" the President.[6] Although effective in 1928, it is to be hoped that the

[6] Frank R. Kent, long an admirer of Mr. Hoover, has discussed the question in "Charley Michelson," in *Scribner's Mag.*, September, 1930, pp. 290-296. The

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American electorate will not further respond to such absurdities. The party officials who are directing the fortunes of the minority party are abundantly justified in their attempt to make it an effective critic of the majority party. There are many indications that they have in considerable measure succeeded. The results, it is to be hoped, will be beneficial to both parties.

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article was reprinted as a Republican campaign document for the 1930 elections. See also Oliver McKee, Jr., "Publicity Chiefs," *North American Review,* October, 1930, pp. 411-418.

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CONSTITUTIONAL LAW IN 1929-30

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1929

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A. QUESTIONS OF NATIONAL POWER

I. LEGISLATIVE POWER

1. *Regulation of Commerce*

The Supreme Court continues its century-long task of drawing the line that separates commerce which is interstate or foreign from that which is local. The realistic nature of the test which it uses is made clear in two cases decided during the present term. In Superior Oil Company v. Mississippi *ex rel.* Knox,[1] the plaintiffs, by a cleverly devised arrangement of technicalities, sought to make it appear that they were selling gasolene in interstate commerce. They hoped thus to escape the payment of the tax of three, and later four, cents a gallon imposed by Mississippi law upon the sale of gasolene within the state. The device used was as follows: The plaintiffs sold oil and gasolene to fish packers in Mississippi and delivered it to them at their wharves. The packers loaded this onto their own boats and sent it to a point in Louisiana where they in turn delivered it to shrimp fishermen who used it in fishing. The fishermen brought back their catch and sold it to the packers and were charged for the oil and gasolene. In each case the oil company gave the packers a bill of lading stipulating that the gasolene remained the company's property until delivered to the consignee's agent at the point of destination. In other words, a Mississippi seller deliberately takes gasolene outside the state of Mississippi in order to deliver it to a Mississippi buyer in the expectation that the transaction will have the appearance of interstate commerce and escape local taxation as such. The Court held that the business did not constitute interstate commerce. In an opinion by Mr. Justice Holmes it is pointed out that the gasolene was actually bought by the packers within the state and that they were under no obligation to send it over

[1] 280 U.S. 390.

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the state line for delivery. "The only purpose of the vendor here was to escape taxation."

In United States v. Erie Railroad Company,[2] the carrier attacks the jurisdiction of the Interstate Commerce Commission to establish a rate for the transportation by rail within the state of New Jersey of wood pulp imported through Hoboken and shipped from there to Garfield, New Jersey, over the defendant's road. It alleges that this shipment by rail is local and not part of the importation. The whole transaction was as follows: The paper mill at Garfield, New Jersey, offers to buy from a New York broker who represents certain foreign mills certain quantities and grades of foreign wood pulp. The broker cables one of the mills he represents and receives their acceptance of the offer, naming the Garfield mill as purchaser. The broker then makes a contract with the Garfield company in his own name providing for the shipment of the pulp from abroad and its delivery at an agreed price in New York harbor. The foreign mill is not named in the contract, but receives a copy of it. The pulp is shipped to the broker marked with brands, not with the names of individual customers. The broker is able, however, to identify the pulp destined for the Garfield factory and arranges for its shipment by rail after its arrival in port. The company pays for this transportation directly. The carrier contends that the title to the pulp passes to the consignee at Hoboken, and not before; and that the shipment by rail from the port to the ultimate destination is, therefore, a separate and independent transaction entirely subsequent to the importation and not connected with it. The Court, speaking through Mr. Justice Brandeis, held that the precise point at which title passed was immaterial, and that the rail transportation was in fact a part of foreign commerce. The finding of the Interstate Commerce Commission that "from the time the pulp is put aboard the steamer there is a continuing intent that it should be transported to Garfield" was amply supported by evidence, and was conclusive.

2. *National Taxation*

Two years ago the Court held in Blodgett v. Holden[3] that a federal tax laid upon gifts made before the law went into effect was void as a deprivation of property without due process of law. In the case of

[2] 280 U.S. 98.

[3] 275 U.S. 142. See comment in this *Review*, vol. 23, p. 81.

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Bromley v. McCaughn,[4] questions as to the validity of the act as applied to gifts made after its effective date were certified to the Court from the circuit court of appeals. These questions were: Does the gift tax violate the Constitution because it is a direct tax and is not apportioned? Does it deny due process of law because of the arbitrary schemes of graduation and exemption which it involves? Does it violate the requirement of uniformity? In an opinion by Mr. Justice Stone, the Court answers all these questions in the negative. The tax is not a direct tax. Direct taxes are those "levied upon or collected from persons because of their general ownership of property," or a tax "which falls upon the owner merely because he is owner, regardless of the use or disposition made of his property." An excise, on the other hand, is a "tax imposed upon a particular use of property or the exercise of a single power over property incidental to ownership." The gift tax falls in this latter class, since the power to give it away is a mere incident of property or power over it. The system of graduation and exemptions contained in the law is found to be not arbitrary in character, and therefore not wanting in due process of law. Finally, there is no violation of the constitutional rule of uniformity applicable to excises, since that rule, as has often been held, requires only geographical, and not intrinsic, uniformity. Mr. Justice Sutherland, with Justices VanDevanter and Butler concurring, dissented on the ground that "the right to give away one's property is as fundamental as the right to sell it, or indeed to possess it." A tax upon the gift is in effect a tax upon the property itself, and is therefore direct and must be apportioned.

The case of Tyler v. United States[5] and two cases merged with it present an interesting problem in the interpretation of the federal succession tax law. In each case a husband and wife held property as "tenants by the entirety," a form of joint ownership, and in each case the property had originally been the exclusive property of the husband before the tenancy was created. At his death the entire amount of the property thus jointly held was included in the husband's gross estate in computing the amount of the succession tax. The provisions of the statute plainly include such property. It is alleged that to levy the tax is unconstitutional because the tax falls upon property which the wife already owns and is, therefore, a direct tax which is

[4] 280 U.S. 124.
[5] 281 U.S. 497.

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unapportioned. It is also attacked as being so arbitrary and capricious as to amount to a denial of due process of law. The Court upheld the tax. The contention that the tax is direct is unsound, because it is actually imposed upon the right of the wife to receive at the death of the husband rights in the property held as tenants by the entirety which she had not heretofore enjoyed. For the first time she becomes entitled to exclusive possession and control over property in which her husband has before enjoyed equal rights. "Thus the death of one of the parties to the tenancy became the generating source of important and definite accessions to the property rights of the other. There is, in other words, a transfer of property rights due to death; and a tax upon that transfer is an excise and not a direct tax. The Court found no merit in the argument based on the due process clause.

3. *Ceded Districts*

The exclusive nature of the jurisdiction enjoyed by the United States over lands acquired by the federal government by purchase with the consent of the state legislature of the state within which they are located is upheld in two cases. In United States v. Unzeuta,[6] the defendant was indicted for murder alleged to have been committed in a freight car on the right of way of the Chicago and Northwestern Railway through the Fort Robinson Military Reservation in Nebraska. He alleged that the federal district court had no jurisdiction, since the right of way was within the jurisdiction of the state of Nebraska. The district court held that it had no jurisdiction, and the government appealed. The right of way was acquired by the railroad in 1885, and jurisdiction over the district was ceded to the United States by the state of Nebraska two years later, with the proviso that the cession should cease if the United States discontinued the ownership and occupation of the district, and with the further condition that the state should enjoy the right to serve civil and criminal process within the district. The Court held that the jurisdiction of the United States was complete and exclusive; that the right of way enjoyed by the railroad was entirely compatible with that exclusive jurisdiction, and that the defendant was properly triable in the district court.

In Surplus Trading Company v. Cook,[7] the Court held that the state of Arkansas could not collect a personal property tax upon a

[6] 281 U.S. 138.
[7] 281 U.S. 647.

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quantity of army blankets which the plaintiff company had purchased from the federal government, and which upon the date fixed by state law for the listing of personal property for assessment were still within the boundaries of the Camp Pike Military Reservation. Camp Pike was acquired by the United States in 1917 with the consent of the legislature of Arkansas. The jurisdiction of the federal government over it is complete and exclusive, and the taxing laws of the state can have no effect within it. The opinion of Mr. Justice VanDevanter contains an excellent résumé of the cases bearing upon the constitutional status of ceded districts.

II. JUDICIAL POWER

1. *The Nature and Content of Judicial Power*

The courts of the United States have no jurisdiction over divorce, even when the parties to the case are those to whom federal jurisdiction would normally apply. This is held in Ohio *ex rel.* Popovici v. Agler.[8] Popovici was the vice-consul of Rumania and a citizen of that country. His wife sued him for divorce in an Ohio court, and he denied the jurisdiction of the state court. The words of the Constitution and statutes seem on their face to bear out his claim. Article III provides that "The judicial power shall extend . . . . to all cases affecting ambassadors, other public ministers and consuls," and that "In all cases affecting ambassadors, other public ministers and consuls . . . . the Supreme Court shall have original jurisdiction." The Judicial Code expressly states that the jurisdiction vested in the federal courts shall be exclusive of the jurisdiction of the courts of the several states in certain enumerated cases, among which are "all suits and proceedings against ambassadors, or other public ministers, or their domestics, or domestic servants, or against consuls or vice-consuls." Jurisdiction over suits against consuls and vice-consuls is specifically given to the district courts. In spite of this sweeping language, the Court held that the federal courts have no jurisdiction in a divorce action. In a short opinion, Mr. Justice Holmes pointed out that when the Constitution was framed it was generally understood that the field of domestic relations was reserved to the regulation and jurisdiction of the states, that there was no intention to invest the federal courts with authority in such cases, and that the words "suits against consuls and vice-consuls"

[8] 280 U.S. 379.

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must be taken to mean ordinarily civil proceedings, and not to include what formerly would have belonged to the ecclesiastical courts.

In Federal Radio Commission v. General Electric Company,[9] the Supreme Court refused to review the decision of the court of appeals of the District of Columbia given on an appeal from an order of the Federal Radio Commission, on the ground that the proceeding was not a case or controversy within the meaning of the judiciary article of the Constitution, and consequently not within the scope of federal judicial power. The powers granted to the Radio Commission are broadly discretionary. They include the issuing of radio station licenses and renewals thereof "where public convenience, interest, or necessity will be served thereby," and authorize the Commission to determine the question of public convenience, interest, or necessity. The decisions of the Commission in matters under its control are final, subject to appeal to the court of appeals of the District of Columbia. The present case arose out of a reversal by the court of appeals of an order of the Commission. In an opinion written by Mr. Justice VanDevanter, it is held that the function of the Commission in issuing or refusing to issue a license is a purely administrative act, while the provision for appeals to the court of appeals of the District "does no more than make that court a superior and revising agency in the same field." The function which the court of appeals performs is precisely the same as that rendered in hearing appeals from the Commissioner of Patents, a function which has repeatedly been held to be administrative rather than judicial in character. The court of appeals of the District of Columbia is not organized under the judiciary article of the Constitution, but is a "legislative court," organized in the exercise by Congress of its power to govern the District. It may properly be invested with non-judicial duties, and has in fact fallen heir to several of that character. The Supreme Court, however, may exercise only judicial functions and may not participate in the exercise of functions which are essentially legislative or administrative. The present case is wholly different from those in which the Supreme Court reviews the decisions of the Board of Tax Appeals or the orders of the Interstate Commerce Commission or the Federal Trade Commission. The jurisdiction exercised in those cases is strictly judicial in character.

The aversion which the Supreme Court has shown to taking jurisdiction in cases which partake of the nature of declaratory judgments is

[9] 281 U.S. 464.

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emphasized in its refusal to take jurisdiction in Piedmont and Northern Railway Co. v. United States.[10] The case arose out of an application by the plaintiff for permission to extend its lines, an application which was refused by the Commission. An injunction was sought to restrain the Commission from taking any action against the plaintiff under the order. The Court, through Mr. Justice Brandeis, held that "the order is entirely negative. It is not susceptible of violation and cannot call for enforcement. . . . . There is no suggestion in the bill how the Commission or the government could conceivably take any action under the order. . . . . What the plaintiffs are seeking is, therefore, in substance, a declaratory judgment. . . . . Such a remedy is not within either the statutory or the equity jurisdiction of federal courts."

2. *Judicial Power in Suits Between States*

It will be recalled that at the 1928 term of the court the Supreme Court issued a decree in the case of Wisconsin v. Illinois[11] to the effect that the state of Illinois and the Sanitary District of Chicago must proceed at once to reduce the excessive diversion of water from Lake Michigan, construct sewage disposal plants, and adjust itself to a flow of water through the drainage canal only adequate to maintain navigation. The precise method by which these results were to be accomplished was to be recommended to the Court by the master, Mr. Hughes, to whom the case was again referred for further consideration. The findings of the master were duly filed with the Court, and in the present case of Wisconsin v. Illinois[12] a decree is issued carrying them into effect. The substance of the decree is that after July 1, 1930, not more than 6,500 cubic feet of water per second may be diverted from the lake; after December 31, 1935, not more than 5,000 cubic feet per second may be taken; and after December 31, 1938, not more than 1,500 cubic feet per second may be taken. In each case allowance is made for domestic pumpage. The Sanitary District is required by the Court to file twice a year a report setting forth the progress made in the construction of sewage disposal plants, the effect of the operation of such plants, and the average diversion of water from the date of the decree down to the making of the report. At the making of these reports either the plaintiffs or the defendants may apply to the Court

[10] 280 U.S. 469.
[11] 278 U.S. 367. See comment in this *Review*, vol. 24, p. 77.
[12] 281 U.S. 179.

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for such action or relief with respect to time for construction, or with respect to the diversion of water, as may be appropriate.

The case of Kentucky v. Indiana[13] presents a rather unique controversy between two states. In 1928 Kentucky and Indiana, through their respective highway commissions, entered into a contract for the joint construction of a bridge across the Ohio River between Evansville in Indiana and Henderson in Kentucky. Various acts of the two state legislatures and of Congress were recited in the contract as authority for the enterprise. Indiana began construction, and thereupon nine taxpayers of the state brought suit in the state court to enjoin the highway commission from proceeding with the work, on the ground that the contract was unauthorized and void. Delay resulted, inasmuch as Indiana refused to go forward with the work until the taxpayers' action attacking her right to do so was disposed of. The state of Kentucky therefore brought an original suit in the Supreme Court seeking an injunction to restrain the individual citizens from bringing an action in the state court which would interfere with the performance of the contract, and seeking specific performance of the contract by the state of Indiana. The defense of the state of Indiana, if it can be called a defense, is novel. It admits all the allegations of the state of Kentucky. It states that it believes that the contract is valid and that it wishes to proceed with its performance. Its only excuse for not doing so is the taxpayers' action brought in its own court. If the Supreme Court will grant to the state of Kentucky either type of relief asked for, Indiana will at once proceed to the performance of the contract. The Supreme Court dismissed the petition for the injunction against the individual Indiana litigants on the ground that they could not properly be made parties to the action between the two states, since any decree rendered would bind the state of Indiana regardless of any inconsistent proceedings in its own courts. A writ of specific performance was issued, however, ordering Indiana to proceed with the execution of the contract. The defendant state had made no defense, and Kentucky was plainly entitled to the relief asked for.

III. FEDERAL BILL OF RIGHTS

1. *Waiver of Jury Trial*

One of the most important and interesting cases decided at the present term of court was that in which it was held that a defendant in

[13] 281 U.S. 163.

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a criminal prosecution in a federal court may waive his constitutional right to a jury trial. This is the case of Patton v. United States.[14] Patton was indicted for conspiracy to bribe a federal prohibition officer, a crime punishable by imprisonment in a federal penitentiary. A jury of twelve men was duly empaneled, and the trial proceeded for a week, at the end of which time one of the jurors was taken seriously ill and was unable to serve further. Thereupon it was agreed between the prosecution and the defendant, the defendant personally assenting in open court, that the trial should proceed with the remaining eleven jurors. The court consented to this, after emphasizing that the absense of a juror would result in a mistrial unless both sides should waive all objections. After this statement by the court, both sides again openly indicated their willingness to proceed with eleven jurors, and the trial accordingly went forward and resulted in the conviction of the defendant. An appeal was thereupon taken to the circuit court of appeals on the ground that the defendant had no power to waive his constitutional right to a trial before a jury of twelve persons. The circuit court of appeals certified the constitutional question to the Supreme Court. The opinion of the Court is written by Mr. Justice Sutherland, and is an elaborate and able analysis of the whole problem. The court recognizes at the outset the importance of the problem, the divergence of opinion upon it in the lower federal and state courts, and the fact that in some of its own earlier opinions there are statements which, if followed, would deny the right to waive a jury trial. Next, the precise nature of trial by jury, as that phrase is used in the Constitution, is examined and found to embody three essential elements: "(1) that the jury should consist of twelve men, neither more nor less; (2) that the trial should be in the presence of and under the superintendence of a judge having power to instruct them as to the law and advise them in respect of the facts; and (3) that the verdict should be unanimous." These three common law elements are embedded in the Constitution, and "are beyond the power of the legislative department to destroy or abridge." It follows that a trial before a jury of eleven men is not a jury trial in the constitutional sense, any more than would be a trial before a jury consisting of a single person. Agreeing to a trial before a jury of eleven is equivalent to agreeing to waive a jury trial altogether. The Court is unimpressed by the suggestion that eleven is almost twelve, that the deviation from the con-

[14] 281 U.S. 276.

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stitutional requirement is slight, and that the courts can be depended upon to see that the size of the jury is not unduly reduced. "It is not our province," says Mr. Justice Sutherland, "to measure the extent to which the Constitution has been contravened and ignore the violation, if, in our opinion it is not, relatively, as bad as it might have been."

The Court then turns to what it declares to be the crucial question in the case, which is: "Is the effect of the constitutional provisions in respect of trial by jury to establish a tribunal as a part of the frame of government, or only to guarantee to the accused the right to such a trial?" If jury trial is an essential part of the structure of government, obviously no defendant can possibly have the power to waive it. But after careful consideration the Court reaches the conclusion that such is not the case. There is no evidence that in English or colonial law such a view was taken of jury trial. On the contrary, it seems clear that the framers of the Constitution viewed it as a privilege which they were preserving for the benefit of the accused. This interpretation is supported by the fact that American courts have always recognized the right to waive jury trial in civil actions, and have also permitted pleas of guilty in criminal trials. The plea of guilty has the effect of dispensing with jury trial and "effectively destroys the force of the thought that 'the state,' the public, have an interest in the preservation of the lives and liberties of the citizens and will not allow them to be taken away without due process of law." The fact that in England the accused was not permitted to waive jury trial was due to the rigidity of the law which denied him the right to waive any right set up for his protection. The position of the accused, thanks to a more humane modern policy, has been so far improved that many protections with which the common law originally surrounded him have been relaxed without prejudice to his rights, and it is no longer possible to say that the waiver of a jury trial is forbidden on grounds of public policy. Nor is there any sound reason for concluding that such waiver may be effective in the case of misdemeanors and not in the case of felonies.

2. *Due Process of Law*

In Tagg Brothers and Moorhead v. United States,[15] a provision of the Packers and Stockyards Act of 1921 was attacked on the ground of

[15] 280 U.S. 420.

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an alleged denial of due process of law. This provision declared that persons engaged in the business of buying or selling in interstate commerce livestock on a commission basis are "market agencies." It required such agencies to furnish their services upon reasonable request, without discrimination and at reasonable rates, and conferred upon the Secretary of Agriculture the power to determine what are just and reasonable rates. In addition to certain objections based upon the procedure followed in fixing such rates, the plaintiffs alleged that the act was void because the services they rendered were no part of interstate commerce and hence were beyond the reach of congressional regulation, and because those services, being personal in character, were not affected with a public interest sufficient to permit the regulation of their rates by law. The rates themselves as set up by the Secretary of Agriculture were also charged to be confiscatory. The Court, speaking through Mr. Justice Brandeis, found no difficulty in upholding the act against these attacks. The plaintiffs perform "an indispensable service in the interstate commerce in live stock," so that there is no doubt that they are well within the reach of the commerce power. The fact that the services rendered are personal in nature, being those of a broker, does not prevent their being also affected with a public interest. They are so affected, and there is no denial of due process of law in subjecting them to regulation by law. The fact that the plaintiffs employ small capital has no bearing upon the public and monopolistic nature of their business. The minor objections grounded upon procedural methods employed in establishing the rates, and upon the alleged insufficiency of the evidence upon which they were based, were rejected as without substantial merit.

An important decision affecting the legal position of labor organizations involved in interstate commerce and covered by the Railway Labor Act of 1926 is the case of Texas & New Orleans Railroad Co. v. Brotherhood of Railway & Steamship Clerks.[16] It will be recalled that fresh machinery for the settlement of labor disputes on the railroads was set up in the Transportation Act of 1920. A Labor Board was created, with power to act as a board of arbitration between the roads and their employees. The Court held, however, that the Board had no power to compel compliance with any award which it might make, but must rely upon the "moral constraint of publication of its decisions." General dissatisfaction with the Board and its powers and

[16] 281 U.S. 548.

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activities led to the enactment in 1926 of a new statute creating a permanent Board of Mediation and a system of voluntary arbitration of labor disputes with compulsory enforcement of awards. In all cases a preliminary attempt must be made to settle such disputes by amicable agreement and conference between representatives of the roads on the one side and the employees on the other. In that connection the act stipulates: "Representatives, for the purposes of this chapter, shall be designated by the respective parties in such manner as may be provided in their corporate organization or incorporated association, or by other means of collective action, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other."

In the present case a dispute had arisen between the brotherhood of railway clerks and the railroad with respect to wages. This had been referred to the Board of Mediation, and conferences were in progress. The brotherhood had been organized in 1918, and had been continuously recognized by the majority of clerks in the employ of the road as having the right to represent them and their interests. After the beginning of negotiations the company instigated the formation of a union of its railway clerks. It brought pressure to bear on members of the brotherhood to withdraw from that body and join the new organization, and attempted to make the new union the spokesman for the clerks in dealing with the railroad. This pressure took the form of the discharge of some of the more active officers of the brotherhood and the cancellation of their passes. Employees of the company were allowed to spend their time in organizing the new union without reduction of their pay. There was ample evidence, based upon correspondence of the railroad officials, that the company was trying to secure a settlement of the wage dispute on terms satisfactory to itself, and that the new union was being used directly to that end. The brotherhood secured an injunction from the district court enjoining the company from interfering in any way with the free choice of representatives by the clerks. After this injunction was issued, the road recognized the new union as the official representative of the clerks, and was thereupon adjudged by the court to be in contempt of court for breach of the injunction. To purge itself of this contempt, it was ordered to disestablish the new union entirely and reinstate the brotherhood as the representative of the clerks until such time as those employees by secret ballot should select some other representatives. The validity of the

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injunction was attacked by the railroad as not being within the scope of the act, and as being unconstitutional on several different grounds.

In an illuminating opinion by Chief Justice Hughes the injunction was upheld. It was claimed that the statement in the statute quoted above purporting to guarantee freedom of action in the selection of representatives was merely declaratory of a policy, but was not susceptible of actual enforcement through a court decree. The Court pointed out that such freedom of selection was indispensable to the effective working of the whole scheme set up by Congress, was appropriate to the purpose of Congress, and was capable of enforcement. It must be concluded, therefore, that Congress actually intended that it should be enforced. The absence of any stipulation in the act of penalty for interference with such freedom of selection does not bar enforcement by injunctive process. The contention that the power of Congress over interstate commerce does not extend to this field of legislation is repudiated. It is well within the power of Congress under the commerce clause to "facilitate the amicable settlement of disputes which threaten the service of the necessary agencies of interstate transportation." It was urged that the decisions in Adair v. United States[17] and Coppage v. Kansas,[18] invalidating the so-called "anti-coercion statutes" which forbade employers to discharge employees because of labor union membership, applied to the present case and proved that the railroad was being deprived of its liberty without due process of law. The Court answered that there is here no interference with any right of the employer. The employer has no constitutional right to interfere with the freedom of the employees in making their selection of representatives, and consequently is not being deprived of any right without due process of law. Finally, it was urged that the injunction was improvidently issued, because the Clayton Act provides that no injunction shall issue in a labor dispute unless necessary to prevent irreparable injury to property or to a property right. The Court expressed doubt whether this provision would prevent the issuance of an injunction to restrain a violation of an explicit provision of an act of Congress. It expressed its belief that a property interest, namely the free choice of representatives, was imperilled by the interference of the railroad, and that the injunction fell within the scope of the Clayton Act.

[17] 208 U.S. 161.
[18] 236 U.S. 1.

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IV. STATUTORY CONSTRUCTION

1. *The Volstead Act*

Two cases of importance dealing with the meaning of the Volstead Act were decided during the present term. In United States v. Farrar,[19] the question arose whether a person who buys intoxicating liquor the sale of which is forbidden by the act can be punished under any provision of the statute. The act provides that it shall be unlawful for any person to "manufacture, sell, barter, furnish, or possess any intoxicating liquor except as authorized in this act." This clearly does not forbid the purchase of the liquor. The act further authorizes the manufacture and sale of liquor for medicinal, mechanical, and sacramental purposes, and establishes a system of permits covering these uses. In this connection it stipulates that "no one shall purchase . . . any liquor without first obtaining a permit from the commissioner to do so." The government claimed that this clause could be interpreted broadly to forbid any purchase of liquor not made specifically legal. The Court held, however, that this clause must be interpreted as applying only to sale and purchase of liquor in the authorized traffic, and could not be given the broader application. The Court alludes to the long-standing doctrine that the purchaser of illicit liquor is guilty of no offense. It alludes to the fact that the government is thus left free to secure evidence of unlawful sale by preserving the complete freedom of the buyer of liquor to testify against the seller, and suggests that this may have been the motive underlying the immunity always extended to the buyer. At any rate, Congress in passing the Volstead Act must be presumed to have known that this was the state of the law, and its failure to provide specifically for the punishment of the purchaser must be construed as evidence of its intention to leave him free from restraint.

In Danovitz v. United States,[20] the Court extended the scope of the forfeiture provision of the Volstead Act to include containers, barrels, bottles, corks, labels, and cartons offered for sale in such a way as purposely to attract purchasers who wanted them for unlawful manufacture of liquor. The forfeiture of the property was based on the provision of the statute which makes it "unlawful to have or possess any liquor or property designed for the manufacture of liquor in-

[19] 281 U.S. 624.
[20] 281 U.S. 389.

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tended for use in violating this chapter or which has been so used, and no property rights shall exist in any such liquor or property.'' In an opinion by Mr. Justice Holmes, it is declared that the purpose of the Prohibition Act was to suppress the entire liquor traffic and it must be liberally construed to that end. The goods seized were certainly in a general and loose sense designed to be used in the manufacture of liquor, and as such were within the prohibition of the act.

Interstate Commerce Commission v. United States *ex rel.* Los Angeles[21] holds that the Transportation Act of 1920 does not empower the Interstate Commerce Commission to compel interstate railroads to build a union station in the city of Los Angeles.

In International Shoe Co. v. Federal Trade Commission,[22] the Court set aside a finding of the Federal Trade Commission that the plaintiff was guilty of violating the Clayton Act. The Commission's ruling had been based on the fact of the acquisition by one company of the stock of another engaged in the manufacture of shoes. The Court rejects this on the ground that the bulk of the trade of each of the companies is in a different section of the country; that because of differences of appearance and workmanship the products of the two concerns do not appeal to the same class of buyers; that in respect to ninety-five per cent of the business there was no actual competition. The resulting lessening of competition is not sufficient to affect the public injuriously. Mr. Justice Stone, with Justices Holmes and Brandeis concurring, dissented on the ground that the finding of the Commission, since supported by evidence, should be regarded as conclusive.

In United States v. Wurzback,[23] the meaning and validity of the federal Corrupt Practices Act of 1925 was presented to the Court. Wurzbach, a member of the House of Representatives, was indicted for having received money from officers and employees of the United States for use in his primary campaign for renomination to the House of Representatives. The act provides: ''It is unlawful for any senator or representative in . . . Congress, or any candidate for, or individual elected as, senator, representative, . . . or any officer or employee of the United States . . . to directly or indirectly solicit, receive, or be in any manner concerned in soliciting or receiving, any

[21] 280 U.S. 52.
[22] 280 U.S. 291.
[23] 280 U.S. 396.

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assessment, subscription, or contribution for any political purpose whatever, from any other such officer, employee, or person." The district court quashed the indictment, and the government appealed under the Criminal Appeals Act. The lower court assumed that the authority of Congress to pass the provision in question rested upon the constitutional clause giving Congress the power to regulate the manner, time, and place of holding elections, and that consequently, under the doctrine of the Newberry decision, the prohibitions of the statute could not be made applicable to primary elections. This assumption, however, the Supreme Court rejects. Speaking through Mr. Justice Holmes, it holds that the basis of the act is the power of Congress to control and protect its own officers. "The power of Congress over the conduct of officers and employees of the government no more depends upon authority over the ultimate purposes of that conduct than its power to punish a use of the mails for a fraudulent purpose is limited by its inability to punish the intended fraud. . . . . It hardly needs argument to show that Congress may provide that its officers and employees neither shall exercise nor be subjected to pressure for money for political purposes, upon or by others of their kind, while they retain their office or employment." Nor is the act open to objection upon the grounds of vagueness.

B. QUESTIONS OF STATE POWER

I. THE FOURTEENTH AMENDMENT

1. *Due Process of Law*

a. *Due Process of Law in Relation to the Police Power.* There were no decisions of outstanding importance dealing with the application of the due process clause of the Fourteenth Amendment to state police legislation. The case of Corn Exchange Bank v. Coler[24] upholds a New York statute which provides for the impounding of the property of an absconding husband or father and its application to the support of wife and children likely to become public charges. This may be done without notice, either actual or constructive, to the absconder. The practice is an ancient one and does not deny due process of law.

A variation on the case of Lawton v. Steele[25] arises in the case of Miller v. McLaughlin.[26] The middle of the channel of the Missouri

[24] 280 U.S. 218.
[25] 152 U.S. 133.
[26] 281 U.S. 261.

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River divides Nebraska and Iowa. Nebraska forbids fishing in Nebraska waters with nets, traps, or seines, and makes the possession of them unlawful except as authorized by the department of agriculture. An Iowa statute forbids such fishing in Iowa waters unless one secures a license from the state game warden for the use of such nets and seines. Miller, a resident of Nebraska, is about to have his nets and seines confiscated under the Nebraska law and protests that he plans to use them on the Iowa side. He challenges the right of Nebraska to forbid his fishing in the waters of the Missouri River because of the alleged concurrent jurisdiction which the two states enjoy over the river. The Court rejects both contentions. Nebraska has full power to prevent its own citizens from fishing in its own waters, and Miller's pious intention to use his nets on the Iowa side, assuming that he could get an Iowa license, does not protect them from confiscation by Nebraska if he keeps them within the boundaries of that state.

In New Orleans Public Service Co. v. New Orleans,[27] the plaintiff, a street railway company which had some years ago constructed with municipal permission a single-track viaduct over one of the city streets, is now ordered to remove it on the ground that it is unsafe, that it requires extensive repairs to put it into proper condition, and that the public interest will be served by the establishment of a double-track grade crossing. This is to be done at the company's expense. The Court holds that this is not an unreasonable exercise of the police power, and hence no impairment of the Company's franchise contract.

b. *Due Process of Law in Taxation.* In three cases of importance the Supreme Court dealt with the question of the jurisdiction of the states to tax intangible personal property and expressly overruled one of its previous decisions upon this point. The first of these is the case of Safe Deposit and Trust Co. v. Virginia.[28] In considering the jurisdiction of a state for purposes of taxation over intangible personal property, it has long been regarded as sound to allude to the rule *mobilia sequuntur personam,* which permits taxation at the domicile of the owner. The decision in the Virginia case does not effect any general repudiation of this rule, but it does establish an exception to its literal application and indicates that the Court does not intend to follow it mechanically when to do so seems to work injustice through double taxation. The facts of the case are as follows: In 1920 one

[27] 281 U.S. 682.
[28] 280 U.S. 83.

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Kellam created a trust for the benefit of his two sons, with the plaintiff, a Baltimore firm, as trustee. The securities comprising the corpus of the trust were kept by the trustees in Maryland. Upon Kellam's death in the same year, the two sons became the equitable or beneficial owners of the trust, but with no power of control. The Kellams were all residents of Virginia and remained so, and Virginia taxed the corpus of the trust. Such taxation the present case holds to be beyond the state's jurisdiction, and therefore a violation of the due process clause of the Fourteenth Amendment. Mr. Justice McReynolds speaks for the Court and emphasizes that the securities are property within the state of Maryland where they are located and controlled by the plaintiffs who are the owners of the legal title. They are obviously subject to taxation by the state of Maryland. No one in Virginia has at present any right to their possession or control, nor any right to receive income from them or to cause them to be brought into the state. Had any resident of Virginia owned or controlled them, the result would be different. As it is, to apply the rule which would make them taxable in Virginia would be to ignore the essential facts of the case and work injustice. The opinion concludes with this observation: "It would be unfortunate, perhaps amazing, if a legal fiction [*mobilia sequuntur personam*] originally invented to prevent personalty from escaping just taxation should compel us to accept the irrational view that the same securities were within two states at the same instant and because of this to uphold a double and oppressive assessment." Justices Stone and Brandeis, in an opinion by the former, concurred in the result. They agreed that a Virginia tax on the legal owners of the trust domiciled in Maryland was bad, but were unwilling to agree that Virginia could not if she wished tax the equitable interests of the beneficiaries of the trust. No attempt had been made to do this. Mr. Justice Holmes dissented on the ground that a Virginia tax on the trust was valid since the actual owners were domiciled there.

The second case, that of Farmers' Loan and Trust Co. v. Minnesota,[29] arose upon the following facts: Taylor, a resident of New York, died in that state in 1925. He had long owned and kept in New York bonds issued by the state of Minnesota and by the cities of Minneapolis and St. Paul amounting to some $300,000. None had any connection with any business carried on by or for Taylor in Minnesota. His will was probated in New York and an inheritance tax levied by that state.

[29] 280 U.S. 204.

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Minnesota assessed an inheritance tax upon the same tranfer of the bonds. The Court held the Minnesota tax void. It pointed out that the bonds were to be regarded as choses in action. The maxim *mobilia sequuntur personam* properly applies to them and gives them a situs for taxation in the state of New York. The case of Blackstone v. Miller,[80] decided in 1903, laid down the doctrine that choses in action, or debts, are subject to taxation both at the domicile of the debtor and also at that of the creditor, and that the two states may properly tax the same transfer of property by inheritance without violating due process of law. In other words, it legalized double taxation in intangible property. The Court now declares: "Blackstone v. Miller no longer can be regarded as a correct exposition of existing law; and to prevent misunderstanding it is definitely overruled."

Mr. Justice McReynolds, again speaking for the Court, points out that there are four theories which have been advanced covering the situs for taxation of negotiable public obligations. One fixes this at the domicile of the owner, one at the debtor's domicile, a third at the place where the bonds are actually kept, and a fourth in the jurisdiction where the owner has caused them to become integral parts of a localized business. To allow each state to adopt any one of these rules and tax accordingly might result in the same bonds being taxed four times. Obviously no state can tax property not within its jurisdiction. It is also true that the right of one state to tax "may depend somewhat upon the power of another to do so." In the case of tangible personal property, the rule has been established that it may be taxed at its situs only and its transfer may be taxed there alone. It is thus protected against double taxation. The same reasons which support the immunity of tangible property from double taxation apply with equal force to intangible property. It has long been held that intangible property, choses in action, is taxable at the domicile of the owner. It may not then be taxed by another jurisdiction. Mr. Justice Stone wrote a concurring opinion in which he took exception to the rather general tenor of the majority opinion with respect to double taxation. "There are, I think, too many situations in which a single economic interest may have such legal relationships with different taxing jurisdictions as to justify its taxation in both, to admit our laying down any constitutional principle broadly prohibiting taxation merely because it is double. . . ." Mr.

[80] 188 U.S. 189.

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Justice Holmes dissented, holding that the transfer of the bonds could be validly taxed both by New York and Minnesota. The laws of Minnesota are necessary to call into existence the obligation represented by the bonds and to keep it alive. "The right to tax [by Minnesota] exists in this case, because the party needs the help of Minnesota to acquire a right, and that state can demand a *quid pro quo* in return."

The third case, that of Baldwin v. Missouri,[31] follows the general rule of the two preceding cases. Mrs. Baldwin, a resident of Illinois, died in 1926 and left all her property to her son, a resident of the same state. The will was probated in Illinois and an inheritance tax paid upon the transfer. The property consisted of real estate in Missouri, credits for cash deposited in Missouri banks, and certain United States bonds and promissory notes also physically located in the state of Missouri. The Court held that the rule of Farmers' Loan and Trust Co. v. Minnesota covers this case. The bank deposits and the bonds are credits, or choses in action, and while physically situated in Missouri are really property in the hands of their owners. They are taxable therefore by the state of Illinois, and not by the state of Missouri. Justices Holmes, Stone, and Brandeis dissented.

In Cochran v. Louisiana State Board of Education,[32] an attempt is made by certain taxpayers to restrain the expenditure of state money for the purchase of textbooks for school children. Under the state law, free books were provided for children, not only in the public schools, but also in private, religious, and sectarian schools as well. This, it was urged, amounted to the taking of private property for a private purpose in contravention of the due process clause. The Court rejected the contention and upheld the tax. It pointed out that the books are supplied to the school children and not to the schools, and that the school children of the state alone are the beneficiaries of the act. There is no evidence that any of the books furnished are religious or sectarian in character. The taxing power of the state has accordingly been used for a public purpose.

The extent of the discretion enjoyed by a state in classifying for purposes of taxation is emphasized in Ohio Oil Co. v. Conway,[33] in which an Ohio statute is upheld against the claim that it is so arbitrary as to deny due process and the equal protection of the laws. The tax

[31] 281 U.S. 586.
[32] 281 U.S. 370.
[33] 281 U.S. 146.

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in question imposed a scale of levies upon oil based upon its gravity, a criterion roughly approximating the gasoline content which is the principal element of value. This criterion is found to be unobjectionable, even though it is not in all cases accurate, and even though some of the oils produced have value for various purposes which does not correspond to their gravity.

In Carley & Hamilton v. Snook,[34] the plaintiffs objected to the payment of graduated license fees exacted by the state of California for the use of the public highways, the proceeds of which went for the maintenance of such highways. These fees were exacted in addition to license fees imposed by the municipalities over whose streets the plaintiffs did most of their business. It is held that there is no objection to the levying of the state tax in addition to the municipal tax, since the state could have levied them both as one tax. The plaintiffs cannot complain because the proceeds of the state fees go to the upkeep of roads which they do not use extensively. There is no obligation on the part of the state to use taxes for the benefit of those who pay them. There is no merit in the contention that the taxes are tolls which are prohibited by the Federal Highway Act. The exemptions in the taxing act based upon minimum weight and the graduated taxes based upon weight of vehicles are not objectionable as denying the equal protection of the laws.

c. *Due Process of Law and Eminent Domain.* Students of municipal government and city planning have been awaiting with interest a decision by the Supreme Court of the United States upon the highly debatable question of the validity of the exercise of the power of eminent domain known as excess condemnation. In City of Cincinnati v. Vester,[35] the Court approaches that problem and then passes it by, though not without throwing some light upon what its final decision upon the question is likely to be. The Vester case, with which two others were merged, arose out of an injunction to restrain the city of Cincinnati from condemning more land than was actually needed for widening a street in that city. Acting under the authority of the Ohio constitutional provision authorizing the use of excess condemnation in connection with municipal improvements, the city proceeded to condemn lands outside the line of the street improvement it had under way. The property of the three plaintiffs was thus taken,

[34] 281 U.S. 66.
[35] 281 U.S. 439.

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and they allege that such taking is in excess of the power of the city, since it amounts to a taking of private property for a private purpose in violation of the Fourteenth Amendment. In defense, the city alleges that, in general, excess condemnation is resorted to for three different purposes: the avoidance of remnants of land, the preservation of improvements through the resale of the excess land under suitable building restrictions, and finally the recoupment of part of the cost of the improvement through the resale of the excess land at a price enhanced by the improvement itself. The city denies that it necessarily expects to resell the excess land at a profit. In fact, it does not seem very sure of just what disposition of the land it is going to make, and declares in its argument "that an impersonality such as a city cannot very well testify as to what its plans and hopes are." The Court, speaking through Chief Justice Hughes, emphasizes the importance of the rule that all takings under eminent domain must be for a public purpose and that the public nature of any taking must in the last analysis be tested by the courts. These are rules which must be followed strictly. Since the city has not indicated, and does not seem able to indicate, what the purpose of the excess taking actually is in the present case, the Court declines to pass upon the public or non-public character of that taking. "Questions relating to the constitutional validity of an excess condemnation should not be determined upon conjecture as to the contemplated purpose, the object of the excess appropriation not being set forth as required by the local law." The excess taking is therefore void on the ground of non-compliance with the Ohio statutes, rather than upon the merits of excess condemnation itself. It seems fair to assume that if the Court had regarded all three of the purposes for which the excess land could have been taken in this case as public in character, it would have upheld the excess condemnation. It seems to the writer a safe speculation that the Court, from its attitude in this case, would hold that excess condemnation for purposes of financial recoupment amounts to a taking of private property for a non-public purpose, and hence is wanting in due process of law.

d. *Due Process of Law and the Regulation of Public Utilities.* Hardly less significant than the O'Fallon case[36] in indicating the Court's present position upon questions of rate regulation and valua-

[36] St. Louis and O'Fallon R. Co. v. United States, 279 U.S. 461. See comment in this *Review*, vol. 24, p. 83.

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tion is the case of the United Railways and Electric Co. v. West,[87] commonly spoken of as the Baltimore Street Railway Case. The facts in the case were not in dispute and are as follows: The company has for thirty years owned and operated all the street railway lines in the city of Baltimore. Its present capital amounts to $76,000,000, consisting of $24,000,000 of common stock and the remainder in bonds. In recent years the total number of passengers carried has decreased, although the "rush hour" business has increased. To meet the rush hour demands, men and equipment have been necessary which cannot be productively employed the rest of the time. Since the war, operating costs have nearly doubled. There was agreement between the company and the public service commission of the state that the present value of the property used by the company was $75,000,000. This amount included $5,000,000 for the company's franchises to use the streets of Baltimore. Upon this valuation the commission had allowed the company a rate which would produce a return of 6.26 per cent. In figuring this return, the depreciation of the company's property was computed at present cost rather than original cost. The rate thus established was attacked by the company as confiscatory. The Supreme Court upheld this contention and set aside the commission's order.

In the opinion written by Mr. Justice Sutherland for the majority of the Court three important issues are dealt with: First, is it legitimate to include in the rate base the value of the easements or franchises which have been given by the city to the utility? This question had not been raised below, but was urged for the first time before the Supreme Court by the commission. Mr. Justice Sutherland does not discuss it on its merits, but sweeps it aside with the statement that if it ever possessed substance an objection to the valuation based on this ground comes too late. The Court thereupon accepts the valuation including this item of franchise value as the basis for disposing of the case. Secondly, the Court finds that 6.26 per cent is an inadequate return upon the company's investment, amounts to confiscation of property, and therefore to a denial of due process of law. In determining what "fair return" is, a number of elements must be considered. To clear the atmosphere, Mr. Justice Sutherland states that "what is a fair return within this principle cannot be settled by invoking decisions of this Court made years ago based upon conditions radically

[87] 280 U.S. 234.

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different from those which prevail today. . . . A rate of return upon capital invested in steel railway lines and other public utilities which might have been proper a few years ago no longer furnishes a safe criterion either for the present or the future.'' Nor can the same test of ''fair return'' be applied to all utilities. ''Circumstances, locality, and risk'' must all be taken into account. Where the income from the service rendered to the public is ''low, uncertain, or irregular,'' a higher rate will be required to stimulate confidence in the enterprise, maintain its credit, and enable it to perform its functions economically and efficiently. Thus, by inference, the plaintiff company, facing a waning and possibly doomed business, must be allowed a higher rate of return than would be necessary in the case of a gas or power company where the profits are certain and the continuance of the public demand apparently guaranteed. It appears that the company in the present case has been obliged to borrow some $18,000,000 during the last ten years, upon which it has paid an interest rate averaging over seven per cent. In the light of these considerations and facts, the Court finds that in this case ''rates securing a return of 7½ per cent, or even 8 per cent, on the value of the property would be necessary to avoid confiscation.'' The company itself having asked for a rate which would produce 7.44 per cent, the Court upholds this as the minimum. Thirdly, the Court holds that the computation of depreciation as an element in determining net income must be made upon the basis of present cost. The point is not argued at length, but the Court's view is embodied in the statement: ''It is the settled rule of this Court that the rate base is present value, and it would be wholly illogical to adopt a different rule for depreciation.''

In an elaborate opinion, Mr. Justice Brandeis dissented from the decision of the Court. While observing that a net return of 6.26 per cent on the present value of the company's property ''would seem to be compensatory,'' he does not argue that point. The reason for this is that the elimination of the value of the company's franchises from the rate base would mean a return of 6.7 per cent; while a computation of depreciation on what he regards as a proper basis would give a return of 7.78 per cent. It is on these two points that he bases his dissent. Rejecting the idea that the Court may not consider the question of the inclusion of the value of the franchises because of delay in raising the question, Mr. Justice Brandeis urges that such values should not be included. His position is summarized in this statement:

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"Franchises to lay pipes or tracks in the public streets, like franchises to conduct the business of a corporation, are not donations to a utility of property by the use of which profit may be made. They are privileges granted to utilities to enable them to employ their property in the public service and make profit out of such use of that property." On the matter of depreciation he takes the position that the mere fact that the rate base is present value does not mean that depreciation must be computed on that basis. In an extended survey of business practice and unofficial and official sanction bearing upon the problem, he shows that the general custom in the business world is to compute depreciation on the basis of original cost. Such a rule, or some approximation of it, ought to be employed in computing the net return of a utility. Justices Holmes and Stone concurred in the dissent, and Mr. Justice Stone added a short dissenting opinion of his own.

The well-established rule that a public utility cannot escape from its obligation to serve the public at rates established by clear contract between it and the public authorities, even though those rates result in loss, tends to focus attention upon the question whether such a contract actually exists. This issue was raised in three cases during the present term. Such a binding contract was found to exist in Georgia Power Company v. City of Decatur.[38] Here the company, while not denying an original binding contract covering rates, tried unsuccessfully to prove that that contract was no longer in force, since the original grantee of the franchise had sold its property to the present plaintiff, while at the same time the city had relieved the plaintiff of certain obligations upon consideration that it would operate the line in question at the contract rate. The contract was held still in force. In Railroad Commission v. Los Angeles Railway Corporation,[39] the Supreme Court, in the absence of state decisions upon the questions, was obliged to determine whether the city had the power to make a binding contract with the company establishing a maximum rate, and whether such a contract had subsequently been abrogated. It held that the city had no such power under the California statutes. Even if it had, as the city seems to have assumed, the contract is no longer in force, since the state, through the railroad commission, has effectively waived the right to require service at the franchise rates by twice taking jurisdiction upon application of the company in a pro-

[38] 281 U.S. 505.
[39] 280 U.S. 145.

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ceeding to determine what a just and reasonable rate would be. In Broad River Power Company v. State *ex rel.* Daniel,[40] the company claimed immunity from an unprofitable rate contract on the ground that the contract had not survived a consolidation of the original grantee of the franchise with other utility companies. The Court found no ground for holding that this merger in any way impaired the continuance of the original franchise contract.

e. *Due Process of Law and Procedure.* The first opinion written by Chief Justice Hughes after his return to the bench was in the case of Ohio *ex rel.* Bryant v. Akron Metropolitan Park District,[41] a case involving the validity of the provision of the Ohio constitution requiring the concurrence of more than a bare majority of the supreme court of that state in order to invalidate an act of the legislature. The provision in question reads as follows: "No law shall be held unconstitutional and void by the supreme court without the concurrence of at least all but one of the judges, except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional and void."[42] The case arose out of an attack upon the constitutionality of the Ohio Park District Act. The lower Ohio courts held the act valid. In the state supreme court, two judges held the act valid and five held it invalid. Under the constitutional provisions quoted, this necessitated a decision of the court upholding the statute. In the present case the rule requiring the concurrence of an extraordinary majority of the court is attacked as a denial of due process of law, an undermining of the republican form of government in Ohio, and a denial of the equal protection of the law. None of these arguments was found by the Court to have force. The objection based on the supposed destruction of republican government was, of course, ruled out on the ground that the enforcement of the guaranty clause presents only political questions. The due process argument was disposed of by holding that the right of appeal to a higher tribunal is not required by due process of law, that due process had been fully accorded by the hearing in the lower state courts, and that the state was therefore free to impose any restriction upon the appeal to the state supreme court which accorded with its view of public policy. The claim that

[40] 281 U.S. 537.

[41] 281 U.S. 74.

[42] For valuable comment upon the operation of this clause since its adoption, see "Minority Control of Court Decisions in Ohio," by W. R. Maddox, in this *Review*, vol. 24, p. 638.

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the provision denied equal protection of the law was grounded on the fact that, under the arrangement established, a state statute might be held constitutional in a case arising in one county of the state and unconstitutional in another, depending upon whether the decision of the supreme court happened to affirm or reverse a decision of the court of appeals. It has long been held, however, that the states have wide latitude in establishing their judicial systems; one system of courts may be set up for cities and another for rural districts; different appellate courts may be set up for different parts of the state. "There is no requirement of the federal Constitution that the state shall adopt a unifying method of appeals which will insure to all litigants within the same state the same decisions on particular questions which may arise."

That due process of law may be denied by judicial decision as well as by legislative or administrative action is emphasized in Brinkerhoff-Faris Trust & Savings Co. v. Hill.[43] The plaintiff brought action in the state court to enjoin the collection of certain taxes on the ground of gross inequality in the basis of assessment. The supreme court of Missouri dismissed the case on the ground that the plaintiffs had an adequate remedy in the form of a right to a hearing before the state tax commission, a remedy which they had neglected to pursue. Six years before the beginning of this suit, however, the supreme court of the state had held that the state tax commission had no authority to grant such relief as that sought in this case, and this had been regarded as the settled law of the state. In the present case this earlier decision is reversed, the authority of the commission is reëstablished, and the plaintiff is told in substance that he should have approached the commission for relief, even though the court itself had squarely held that no such relief could possibly be granted. The reversal of decision effecting the rehabilitation of the commission's power comes too late for the plaintiff to take advantage of it. The result seems to be that the plaintiff has never had his "day in court," and is now denied one. This is held to deprive him of his property without due process of law. If such a procedural scheme had been devised by statute, there would be no doubt as to its transgression of the due process clause. "The violation is none the less clear when that result is accompanied by the state judiciary in the course of construing an otherwise valid state statute."

[43] 281 U.S. 673.

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In Home Insurance Company v. Dick,[44] the defendant, a citizen of Texas, seeks to collect from the plaintiff company, a New York corporation, the amount of an insurance claim for the loss of a boat by fire. The company had reinsured the risk taken by a Mexican company upon the boat. The whole transaction had taken place outside the state of Texas, and the only reason for bringing the action in a Texas court was the fact that Dick resided in the state and that the company had an agent there in compliance with the law applicable to foreign insurance companies. Under the terms of the policy, no claim could be collected unless suit were brought within one year from the date of the loss. More than a year had elapsed before this suit was brought. A Texas statute provides, however, that no person or corporation shall make any contract by the terms of which suits upon it must be brought in less than two years in order to be effective. Dick claims the benefit of this rule. If the Texas rule governs, Dick can recover; if not, he is without a remedy. The court holds that there is no part of the transaction to which the laws of Texas may apply. The state cannot change the terms of a contract operative wholly outside its borders. To extend the contract term of one year within which suit must be brought to two years is to impose a burden upon the company and to deny it due process of law.

2. *Equal Protection of the Laws*

There is no denial of the equal protection of the laws in a Connecticut statute preventing one carried gratuitously or as a guest in an automobile from recovering damages from the owner or driver for injuries resulting from the negligent operation of the car. If the legislature believed that the abuses growing out of the multiplicity of suits arising out of the gratuitous carriage of passengers were conspicuous, it could properly single them out for regulation and control, even though it is conceivable that similar abuses which may occasionally arise in connection with other vehicles are not included in the provisions of the act. This is the case of Silver v. Silver.[45] Other cases raising questions of equal protection of the laws, but involving no new principles of law, are Herbring v. Lee,[46] Corporation Commission of Oklahoma v. Lowe,[47] and Bekins Van Lines v. Riley.[48]

[44] 281 U.S. 397.
[45] 280 U.S. 117.
[46] 280 U.S. 111.
[47] 281 U.S. 431.
[48] 280 U.S. 80.

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II. STATE AND FEDERAL RELATIONS

1. *State Taxation and Interstate Commerce*

An Illinois statute provides that all business corporations, except insurance companies, shall pay an annual license tax of five cents on each hundred dollars of the proportion of its capital stock represented by business transacted and property located in the state. In Western Cartridge Co. v. Emmerson,[49] the application of this tax to the plaintiff was attacked as amounting to a burden upon interstate commerce. The company operates factories and has its principal offices in Illinois. It issued stock to the amount of $5,701,800; it had property valued at $6,924,804, of which $6,894,903 was located in the state. During the year under review its business had amounted to $11,670,925, of which $1,919,822 represented products shipped to Illinois purchasers, while the remainder was made up of goods shipped to customers outside the state and was accordingly reported as interstate commerce. The state of Illinois treated all the business as being done in the state and computed the tax on such proportion on the capital stock as its business plus its Illinois property was of such business and all its property. The Court holds that the tax is properly levied and does not burden interstate commerce. All the goods sold were manufactured in the state, and such manufacturing was business carried on in the state. The state may properly tax all of the company's property located in the state without regard to its use in interstate commerce. The tax in question does not fall directly upon interstate commerce, nor does the amount of it depend upon the amount of interstate business carried on by the company. While the actual shipping of the goods out of the state was interstate commerce, the effect of the tax upon this part of the company's business was so remote and indirect as not to amount to a violation of the commerce clause.

In New Jersey Bell Telephone Company v. State Board of Taxation and Assessment,[50] a so-called franchise tax was laid upon all persons or corporations privileged to use the public streets or highways, computed upon such proportion of the gross receipts from the business in the state as the length of lines or mains in the streets bears to the total length of such lines or mains. The Court, speaking through Mr. Justice Butler, held this to be a burden upon the company's interstate business, and therefore void. The basis upon which the tax was computed

[49] 281 U.S. 511.
[50] 280 U.S. 338.

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bore no true relation to the value of the privilege to use streets. The tax is a direct burden upon gross receipts, and as applied to gross receipts derived from interstate commerce is a burden upon that commerce. Justices Holmes and Brandeis dissented.

2. *State Taxation of Federal Instrumentalities*

The immunity from state taxation which is accorded to federal bonds is enlarged even beyond its previous limits in the case of Missouri *ex rel.* Missouri Insurance Company v. Gehner.[51] A Missouri statute provides that the property of all insurance companies organized under the laws of the state shall be subject to taxation. To this end, the companies are required to make returns of all real estate owned or controlled by them and of "the net value of all its other assets or values" in excess of the reserves required by law for certain specific purposes. In the present case the company made its return as directed, but deducted from its personal property $94,000 worth of United States bonds. The board of equalization of the state declined to accept the company's return, and while not denying the general doctrine of the non-taxability of federal bonds, it employed the bonds in its computation of the company's net worth to the amount of $53,357. This the Court holds to be beyond the power of the state. Says Mr. Justice Butler: "It necessarily follows from the immunity created by federal authority that a state may not subject one to a greater burden upon his taxable property merely because he owns tax-exempt government securities. Neither ingenuity in calculation nor form of words in state enactments can deprive the owner of the tax exemption established for the benefit of the United States." Mr. Justice Stone dissents from this decision in a careful opinion concurred in by Justices Holmes and Brandeis. He maintains that the immunity from taxation by the states extends only to federal securities directly or to their income. There is no sound reason, in his judgment, why such securities may not be included in computing for purposes of state taxation the "net worth" of the company.

[51] 281 U.S. 313.

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LEGISLATIVE NOTES AND REVIEWS

EDITED BY CLYDE L. KING
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State Legislation on Public Utilities in 1930. The problems of public utility control occupy an especially prominent position in the annals of state legislation for the year 1930, even though only ten states held legislative sessions. The records of the hearings and the reports of the special investigating commissions in New York and Massachusetts[1] contain the most thorough, comprehensive, and critical survey, to date, of the whole field of public utilities control.

The New York Commission on the Revision of the Public Service Commission Law (the so-called Knight Commission) conducted hearings extending over a period of six months, from July 15, 1929, to January 15, 1930. Evidence was taken under oath from the members and staff of the Public Service Commission of New York, technical experts and advisers, and representatives of regulatory bodies in other states, of municipalities and civic organizations, of utility corporations and of the general public.[2] The official stenographic report of the hearings covers 5,816 pages[3]—a veritable storehouse of information. Two valuable reports were published. The first was the *Report to the Commission on Revision of the Public Service Commission Law,* submitted to the commission by its counsel, Col. William J. Donovan, and concerned largely with the data prepared by the research staff under the direction of Dr. William E. Mosher, director of the School of Citizenship and Public Affairs at Syracuse University. The second was the *Report* [to the legislature] *of Commission on Revision of the Public Service Commission Law, Including Separate Reports of Commissioners and Council.*

Within the limits of this article it is possible to present only the more significant topics upon which the investigation, recommendations of the commission, and legislative action centered. Such significant topics are the following: (1) valuation of public utilities, including a definite

[1] See "Public Utilities Legislation in 1929," in this REVIEW, Feb., 1930.

[2] State of New York, *Report of Commission on Revision of the Public Service Commission Law,* Legislative Doc. (1930) No. 75.

[3] Marshall and Munson, official stenographers, Senate and Assembly, Albany, N.Y.

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rate base; (2) jurisdiction of the Public Service Commission over holding companies, service agencies, and other affiliated interests; (3) provision for contracts between the Public Service Commission and the utilities corporations for stabilizing valuation and regulation; (4) creation of a "people's counsel" to represent the public in utilities cases; (5) legislation regarding judicial review, to the end that state regulation may be less interfered with by appeals to federal courts; (6) strengthening the commission through increased financial support for the work of the commission, including research staff and research facilities; and (7) extending the jurisdiction of the commission along many lines, including accounting control, authorization of securities, acquisition of stock, mergers and reorganizations, sub-metering companies, private water companies, small telephone companies, and rural electrification.[4]

The first three topics proved the most controversial. On them, wide differences of opinion were revealed between Governor Roosevelt and the three commissioners appointed by him[5] on the one side, and the six majority members on the other.[6]

Valuations: With regard to the first topic, the majority of the commission recommended "that all utility properties in the state, except steam railways and street railways, be valued by the Public Service Commission according to the factors prescribed by the law of the land."[7] It appears that to the majority members "factors prescribed by the law of the land" meant the factors recognized as a basis for rate-making in the recent decisions of the Supreme Court of the United States; such decisions having considered "reproduction cost less depreciation . . . . a dominant element in fixing the valuation of property 'used and useful in the public service.'"[8]

The minority members presented a plan—the so-called Bonbright plan, or the Bauer-Bonbright plan—which would provide for an initial valuation of all utility properties "as of the date of adoption of the act, taking into account every element properly considered under the

[4] State of New York, *Report of Commission on Revision of the Public Service Commission Law*, Legislative Doc. (1930) No. 75, pp. 16-49.

[5] David C. Adie, Frank P. Walsh, and James C. Bonbright.

[6] John Knight, chairman, Horace M. Stone, Joseph A. McGinnis, Warren T. Thayer, William Hickey, and Russell G. Dunmore.

[7] State of New York, *Report of Commission on Revision of the Public Service Commission Law*, Legislative Doc. (1930) No. 75, p. 16.

[8] *Ibid.*, p. 337.

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law of the land, including actual cost, reproduction cost, general expenditures, depreciation, and any other relevant factor. Such initial valuation, when once determined, should remain unchanged without regard to price fluctuation, cost of construction, or other conditions.'' Subsequent additions to the property should be entered into the accounts of the company at ''reasonable cost,'' thus giving the commission a definite and ascertainable rate base at all times, subject to accounting control. Such a plan would at least approximate the ''prudent investment'' basis of rate control,[9] which would give utility companies the right to charge rates sufficient to pay a fair and reasonable return on the money which the investors actually put into the property. It was referred to by the newspapers as the ''frozen value'' plan.[10]

Early in the hearings before the legislature it appeared certain that the ''frozen value'' plan of the minority had no chance of passage. The majority bill providing for the valuation of all utility property was attacked by the Democratic minority not only as a futile gesture, being divorced from the companion bill providing for the ''freezing'' of the present valuation, but also by representatives of utility corporations who declared that such a valuation would be a useless burden to the utilities, to the consumers, and to the taxpayers—useless since ''few gas or electric companies yield a reasonable return to the limit allowed by Supreme Court decisions upon present value. Rates are not as high and will not be as high as would be permissible.[11] Late in the session, opposition to the bill developed among some of the leading Republican senators, so that Senator Knight and his commission, ''in order to get the bill passed, were compelled to amend it so as to provide for valuation only where a rate case was pending.''[12] The bill was ultimately vetoed by the governor. He considered that it tended ''to perpetuate a system of regulation which does not regulate.'' ''The present breakdown of regulation,'' he said, ''cannot be corrected without laws which make possible the fixing of a definite rate base, determinable by definite rules of policy and of accounting rather than of guesswork. The only solution is to get on an actual cost basis.''[13]

[9] *Ibid.*, pp. 17, 250-251, 412.

[10] *New York Times*, April 4, 1930.

[11] Mr. W. L. Ransom, representing the Long Island Lighting Co. and the Brooklyn Borough Gas Company, quoted in *New York Times*, April 1, 1930.

[12] *New York Times*, April 19, 1930.

[13] *Ibid.*, April 27, 1930.

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Notwithstanding his veto of the valuation bill, the governor signed an act appropriating an additional $300,000 for the Public Service Commission, "to be used to defray the expense of a state-wide valuation [in 1930-31] of all the properties in the state actually used in the public service by the utility companies whose rates, charges, price, or rentals are subject to the control of the Public Service Commission."[14] The governor stated that he approved the bill in order "to permit the Public Service Commission to have a contingent fund out of which necessary investigations as to property values may be used in case a large and important rate case is announced."[15]

Holding Companies. With regard to control of holding companies and transactions between affiliated interests, the majority of the commission recommended provisions which were enacted into law by the legislature.[16] The Public Service Commission and the Transit Commission were given "jurisdiction over holders of the voting capital stock of all public utility companies under the jurisdiction of the commission to such an extent as may . . . . require the disclosure of the identity of every owner of any substantial interest in such voting capital stocks."[17] The commission was furthermore given jurisdiction over "affiliated interests . . . . having transactions with utility corporations . . . . to the extent of access to all accounts and records of such affiliated interests relating to such transactions."[18] It was provided further that management, construction, and engineering contracts, to be effective, must first be filed with the commission, and that "if it be found that any such contract is not in the public interest, the commission . . . . is hereby authorized to disapprove such contract."[19]

The minority members of the commission recommended that "every such contract shall require the approval of the commission before it becomes effective."[20] Governor Roosevelt, while signing the bill, pointed out what he considered its weaknesses. "Contracts," he said, "need only to be filed with the commission. It does provide that the

[14] New York, *Laws,* 1930, Chap. 831.

[15] *New York Times,* April 29, 1930.

[16] State of New York, *Report of Commission on Revision of the Public Service Commission Law,* Legislative Doc. (1930) No. 75, pp. 26-27.

[17] New York, *Laws,* 1930, Chap. 760, Sec. 1.

[18] *Ibid.,* Sec. 2.

[19] *Ibid.,* Sec. 3.

[20] State of New York, *Report of Commission on Revision of the Public Service Commission Law,* Legislative Doc. (1930) No. 75, p. 420.

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Public Service Commission may disapprove the contract, but nothing is said about the result of such disapproval." The governor called attention to the failure of the legislation to regulate the issues of securities of holding companies as suggested in the report of the council to the commission.[21] The governor believes that without power over holding companies "regulatory statutes are without teeth," and that "there can be no effective control of holding companies unless the Public Service Commission be given control over the securities of such companies."[22] Publicity with regard to the control of holding companies over operating companies was in part provided for by an act of the legislature requiring utility corporations to state, in their annual reports to the Public Service Commission, "the name and address of, and the number of shares held by, each holder of one per centum or more of the voting capital of the reporting company."[23]

Contracts. The commission recommended "that the Public Service Commission be authorized to enter into contracts with utility corporations for the stabilization of valuation and regulation through accounting control for a period not exceeding ten years."[24] The plan, as explained by Col. Donovan, was as follows: "Basic valuation and rate of return thereon shall be agreed upon between the Public Service Commission and representatives of all the utilities operating in New York State . . . . such agreements shall be written into contracts which are to be filed with the legislature."[25]

The minority of the commission recommended the contract plan as part and parcel of their rate basis provision, including as an essential the "frozen value" plan. They would have the commission enter into compulsory contracts with individual companies, "fixing by agreement definite initial valuations and accepting a system of rate-making in conformity with the mandatory plan."[26] Even the majority proposal was also vigorously opposed by representatives of the utilities.[27] The "contract" bill finally passed by the legislature eliminated the Public Service Commission as a party to the contract and "merely

[21] *Ibid.*, pp. 145-146.

[22] *New York Times*, April 25, 1930.

[23] New York, *Laws*, 1930, Chap. 761.

[24] State of New York, *Report of Commission on Revision of the Public Service Commission Law*, Legislative Doc. (1930) No. 75, p. 7.

[25] *Ibid.*, p. 101.

[26] *Ibid.*, p. 419.

[27] *New York Times*, April 1, 1930.

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extended to the other utility corporations the provision in the present law under which, since 1922, municipalities had been making contracts with street railway corporations.''[28] The measure was vetoed by the governor on the ground that it was ''a useless piece of paper'' and that ''it offers the consumer of electric current and the user of telephones no protection which he does not already enjoy under the present law.''[29]

People's Counsel. The commission recommended that ''a people's counsel be appointed as a deputy attorney-general'' whose exclusive duty would be to advance ''the public interests in utility matters, and further that he have the coöperation of the Public Service Commission and its staff in such investigations as he may see fit to carry on.''[30] The bill was opposed by the Mayors' Conference on the ground that ''there would be no end to the conflict between that department and the Public Service Commission; . . . and that the office should be part of the Public Service Commission organization.''[31] The governor's veto memorandum stated, in addition to the above mentioned reasons, that the bill was ''based upon a fundamentally false conception of the proper function of a public service commission. . . . . It is not, and never has been, merely a court. It is rather intended to represent the public interest. . . . . The duty and function of the Public Service Commission can never remain in doubt. It can never be transferred to an individual as a counsel.''[32]

Judicial Review. The revision commission recommended that the legislature by resolution call upon Congress to ''so amend the judicial code as to leave to the state courts the determination of the local problems involved in rate cases.''[33] The legislature acted affirmatively on the recommendation. The commission, although recognizing that the ''real remedy for the present situation lies in congressional action,''[34] presented a plan, ultimately enacted into law,[35] which appears to offer

[28] *Ibid.*, April 19, 1930.

[29] *Ibid.*, April 28, 1930.

[30] State of New York, *Report of Commission on Revision of the Public Service Commission Law*, Legislative Doc. (1930) No. 75, p. 31.

[31] *New York Times*, April 18, 1930.

[32] *Ibid.*, April 18, 1930.

[33] State of New York, *Report of Commission on Revision of the Public Service Commission Law*, Legislative Doc. (1930) No. 75, p. 28.

[34] *New York Times*, April 26, 1930.

[35] New York, *Laws*, 1930, Chap. 773.

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the state the full advantage of the provisions of the United States judicial code, sec. 266. This section "permits action of a state court to take precedence over an interlocutory injunction in a federal court under certain conditions." The legislation provides, in substance, "that whenever a suit for an interlocutory injunction shall have been begun in a federal district court to restrain an order of the commission, the commission may bring suit to enforce its order in the appellate division or some statutory judicial body at any time before the hearing on the application for an interlocutory injunction." It provides, further, "for a mandatory stay of the enforcement of the commission order pending the determination of the suit in the appellate division, and . . . . for sending a notice to the federal district court in which action was originally begun for giving preference to the action of the appellate division and for appeal to the court of appeals."[36] In signing the bill, Governor Roosevelt expressed his conviction that federal legislation to prevent utility corporations from thwarting state regulation is essential. "The present futility," he said, "of attempting proper control of public service corporations is emphasized under a system where the corporations can, by rushing into the federal courts, substitute for the Public Service Commission an uninformed master. In the meantime, and until Congress acts upon the recommendation of the legislature, this bill may offer some relief. . . . ."[37]

Strengthening the Department of Public Service. Following the advice of the revision commission, the legislature appropriated the sum of $215,800 "for additional personal service, maintenance and operation in the department of public service."[38] Out of this sum, $25,800 was designated for a bureau of research and valuation consisting of six members (chief's salary, $9,000); $6,900 for two engineers to assist in rural electrification; $19,200 for seven motor vehicle inspectors; and $62,200 for 48 additional members of the general staff. The members of the bureau of valuation and research are appointed by the Public Service Commission, and work under its direction in making "an intensive study and investigation of cost of service, cost accounting, rate schedules, including equalization of rates between different classes of

[36] *Ibid.*, Sec. 2. For the quotation, see report of William J. Donovan, counsel, in *Report of Commission on Revision of the Public Service Commission Law*, p. 69.

[37] *New York Times*, April 26, 1930.

[38] New York, *Laws*, 1930, Chap. 675.

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consumers, of public utility companies subject to the jurisdiction of the commission; investigating efficiency in the management and operation of agencies of the public service . . . . and measures and standards of efficiency; conduct the work of valuation and revaluation . . . . to the end that such valuations may be kept reasonably up to date. . . . .[39]

Jurisdiction of the Commission. The accounting control of the commission over operating companies was somewhat strengthened by placing the burden of proof upon the reporting utility for the correctness of the accounts in which outlays and receipts have been entered.[40] The control of the commission was strengthened in regard to issuance and sale of securities of gas and electric corporations.[41] The legislature, however, failed to adopt the revision commission's recommendation relative to extending the control of the commission over short-term loans of amounts in excess of five per cent of the outstanding securities.

The actual legislation resulting from the most thorough consideration of utility problems yet undertaken by an American state legislature was somewhat disappointing, even to the majority members of the Knight Commission; and Governor Roosevelt and the minority members considered a major portion of the legislation to be of little value, since the legislature ignored such fundamentals as controlling the financing of holding companies, establishing a definite and ascertainable rate base, and granting municipalities the legal right to own and operate utilities, which, according to Governor Roosevelt, "would provide the keen spur of competition so necessary to induce the privately owned utilities to accept effective regulation."[42] In comparison with the status of utility control in a majority of the American states, however, it seems fair to conclude that New York State in 1930 made progress toward strengthening the position of the public in the field of public-utility state regulation.

The Massachusetts Special Commission. Public utility legislation in Massachusetts in 1930 was based largely upon the findings and recommendations of the Special Commission on Control and Conduct of Public Utilities appointed under a resolve passed by the 1929 legislature.[43]

[39] New York, *Laws*, 1930, Chap. 850.
[40] *Ibid.*, Chaps. 776, 777, 778.
[41] *Ibid.*, Chap. 780.
[42] *New York Times*, April 26, 1930.
[43] Massachusetts, *Acts and Resolves*, 1929, Chap. 55.

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The commission was expressly authorized to investigate the "control and affiliations of gas and electric companies and matters incidental thereto" and the conduct of municipal lighting plants and their relations, contractual and otherwise, with private companies.[44]

The report contains significant data on holding companies, consolidations and mergers, foreign control of gas and electric companies, management and other contracts, influence of banking support, rates and rate base, public and private ownership, and establishment and sale of municipal plants. The commission recommended to the legislature ten bills: (1) to bring the securities of holding companies under the operation of the sale of securities act; (2) to authorize the Public Utilities Commission to examine the books and papers of holding companies and affiliated organizations and to require such holding companies to furnish information; (3) to require the inclusion in the annual returns of gas and electric companies of information disclosing any "affiliation with any other public utility, holding company, partnership trust, voluntary association or corporation, which has any business relations or dealings with the company making the return . . . ; contracts and loans involved in such inter-company relations;" (4) to extend the power of the Department of Public Utilities to approve contracts of gas and electric companies for the purchase of gas and electricity so that the law is extended to cover contracts for the purchase of gas, and in case of both gas and electricity the law applies to all contracts for over one year; (5) to provide for the approval by the Department of Public Utilities in contracts of gas and electric companies for service; (6) to give the Department of Public Utilities the unquestioned power to compel a gas or electric company dealing in bulk supplies to supply at reasonable rates any operating company or municipality desiring to purchase; (7) to require companies selling electricity only in bulk to file schedules of rates with the department; (8) to revise the law relative to the establishment or purchase of municipal lighting plants, in order that the Department of Public Utilities may have final determination as to the property to be taken and the price to be paid for it; and to leave to the discretion of the department whether both gas and electric properties should be purchased in case both are owned by the selling company; (9) to require the approval of the Department of Public Utilities before any munici-

[44] Massachusetts, *Report of Special Commission on Control and Conduct of Public Utilities*, p. 10.

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pal plant is sold; and (10) to provide for the printing and publication of annual orders, reports, and decisions of the department in sufficient numbers to be available for public distribution.[45]

Massachusetts Legislation. The legislature enacted in substance five of the above laws recommended by the commission (2, 4, 5, 6, and 9).[46] The remaining five for the most part failed of passage, because the legislature was unwilling to put them into a form acceptable to the Department of Public Utilities.

Massachusetts legislation now takes a more advanced position in utility control in the following aspects: (1) Examination of books, contracts, records, etc., of companies and affiliated companies with respect to inter-company relations was authorized. "Affiliated companies is defined as any company having control, directly or indirectly, over the operating company, or any company "standing in such a relation to a company subject to this chapter that there is an absence of equal bargaining power between the corporation . . . . and the company so subject in respect to their dealings and transactions."[47] (2) No gas or electric company may enter into a contract for the purchase of gas or electricity covering a period in excess of two years without the approval of the Department of Public Utilities, unless such contract contains a provision subjecting the price to be paid to review and determination by the department.[48] (3) No contract may be entered into by a gas or electric company for a period exceeding two years, relative to services to be rendered by an affiliated company without approval of the Department of Public Utilities, unless such contract retains a provision subjecting the amount of compensation to review and determination by the department. "And if it appears that the amount agreed on is excessive, the department may declare the said contract to be terminated forthwith, even if no bad faith be found."[49] (4) Municipal ownership was somewhat strengthened by the provision that a municipal lighting plant could not be sold without the approval of the Department of Public Utilities, which is to be given only when it has determined "that the facilities for furnishing and

[45] Massachusetts, *Report of the Special Commission on Control and Conduct of Public Utilities*, pp. 83-84.

[46] Massachusetts, *Acts and Resolves*, 1930, Chaps. 395, 342, 396, 383, and 369.

[47] Massachusetts, *Acts and Resolves*, 1930, Chap. 395.

[48] *Ibid.*, Chap. 342.

[49] *Ibid.*, Chap. 396.

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distributing gas and electricity in the territory served by such plant will not thereby be diminished, and that such sale and the terms thereof are consistent with the public interest.''[50]

The bill suggested by the special commission and sponsored by the Department of Public Utilities which had for its purpose facilitating the purchase of electric light and gas systems by municipalities was so modified in committee as to be unsatisfactory to the department, and was dropped.

The five laws which finally came from the legislative mill seem rather insignificant in comparison with the program presented in the report. The most outstanding problems still facing Massachusetts in the field of public utility control seem to be: (1) maintenance of the so-called ''prudent investment'' theory of valuation; (2) more effective control of holding companies; and (3) removal of legal handicaps to municipal ownership and operation of electric and gas plants.

Rhode Island. The Rhole Island legislature passed an act placing taxicabs under the jurisdiction of the Public Utility Commission. ''Taxicab'' was defined as ''any motor vehicle for hire designed to carry seven persons or less, operated upon any street or highway or on call or demand accepting or soliciting passengers indiscriminately for transportation for hire between such points . . . . as may be directed by the passenger or passengers.'' A person, association, or corporation owning or operating taxicabs is declared to be a common carrier; and the commission is given authority ''to prescribe adequate service and reasonable maximum rates and establish such reasonable rules and regulations with respect to fares, service, operation, and equipment as said commission may deem necessary. . . . .'' No taxicab may be operated without a ''certificate of convenience and necessity'' from the Public Utility Commission.[51]

Vermont. ''An act conferring upon the public service commission jurisdiction over holding companies'' was considered by both houses of the Vermont legislature, but failed of passage during the closing days of their session. The alleged reason for the failure was the lack of time for adequate consideration. The bill required holding companies to make annual reports to the commission on forms prescribed by it, ''including full detail as to property, products, or services exchanged between controlled companies and the revenues and expenses

[50] *Ibid.*, Chap. 369.

[51] Rhode Island, *Public Laws*, 1930, Chap. 1552.

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relating thereto.'' The bill provided, further, for investigation by the commission of the relationship between holding companies and operating companies, to the end that activities of holding companies in relation to operating companies ''may be made a matter of public record.''[52] It is worthy of note that with no staff and a very small appropriation, the Vermont commission would have been in no position to make effective the general provisions of the bill.

Kentucky. Two bills were introduced in the Kentucky legislature relative to creating a public utilities commission. One provided for the abolition of the present railway commission and for vesting its powers in a public utilities commission.[53] The second provided, not for abolition of the railway commission, but for the transfer of its powers to a public service commission, except such as relate to steam railways.[54] Both bills provided for the abolition of the office of commissioner of motor transportation and for the transferring of its powers and duties to the public service commission. Neither bill was passed.

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The Passing of Alien Suffrage. For the first time in over a hundred years, a national election was held in 1928 in which no alien in any state had the right to cast a vote for a candidate for any office—national, state, or local. Because of a reversal of opinion by the state supreme court, alien suffrage in Arkansas became illegal in 1926, and the last vestige of this political anomaly passed from our election system, doubtless never to return.

During the nineteenth century, the laws and constitutions of at least twenty-two states and territories granted aliens the right to vote. This tendency reached its greatest extent about 1875. Even before then it had begun to recede. In the following decades a steady decline set in. The last state constitutions to grant aliens who had declared their intention to become citizens the full right of suffrage were those of the two Dakotas in 1889.

The movement to withdraw the right began with Illinois in 1848. At the opening of the present century, only one-half the original number, or eleven states, continued to grant this right. Prior to our

[52] Vermont, *Senate Docs.*, 1929, pp. 205-206.
[53] Kentucky Legislature, *House Bill* No. 361.
[54] Kentucky Legislature, *House Bill* No. 391.

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entrance into the World War, four of these withdrew the right by constitutional amendment—Alabama in 1901, Colorado in 1902, Wisconsin in 1908, and Oregon in 1914. In 1918, Kansas, Nebraska, and South Dakota adopted amendments limiting the suffrage to citizens of the United States, and Texas, by statute, barred aliens from voting at primary elections. In 1921, Indiana and Texas, and in 1924, Missouri, abolished alien suffrage by amending their constitutions. Aliens still had the right to vote in only the one state of Arkansas.

The longer survival of alien suffrage in Arkansas was not due to favorable popular sentiment. The opinion of the electorate, so far as disclosed by the votes cast, was very much more strongly opposed in Arkansas than in either Texas or Missouri.[1] The real reason was a conservative provision in the amending section of the state constitution, buttressed by a similar decision by the supreme court.

In 1919, the legislature of Arkansas provided for submission to the people, at the general election of 1920, of a constitutional amendment taking from aliens the right to vote. This amendment received a large majority of the votes cast thereon, namely, 87,237 in the affirmative and 49,757 in the negative. But the amending section of the original constitution of the state provided that, in order to become a part of the constitution, an amendment submitted by the legislature must be approved by "a majority of the electors voting at such election." The votes for the amendment in question, while a majority of those cast thereon, fell short of being a majority of the total of 190,113 votes cast at the election. Hence, after canvassing the vote "in the presence of both houses of the General Assembly," the speaker declared the amendment lost. And thus the matter stood for over five years, until the amendment was resuscitated and made a part of the constitution by the following complete "about face" by the supreme court.[2]

In 1910, the people of Arkansas adopted an initiative and referendum amendment to the state constitution. The right to initiate measures extended to constitutional amendments as well as statutes. This amendment also contained the following provision: "Any measure referred to the people shall take effect and become a law when it is

[1] The vote in Texas was 57,622 to 53,910; in Missouri, 175,580 to 152,713.

[2] This is no doubt the reason why all the latest and most authoritative works on our government continue to state that Arkansas permits aliens to vote. The resurrection of the amendment after the lapse of years is so unique that it is small wonder that it has escaped the attention of careful writers and investigators.

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approved by a majority of the votes cast thereon, and not otherwise." A conservative decision rendered by the state supreme court in 1915 held that this provision did not apply to constitutional amendments, and that any amendment, even those proposed by initiative petition instead of by the legislature, must receive a majority of the votes of all the electors voting at the election in order to be adopted.[3]

For a decade this decision determined the law of the constitution on this point and was faithfully applied. In 1925, however, the court reversed its earlier decision in part, and held that an amendment proposed by the initiative was legally adopted when approved by a majority of the votes cast thereon.[4] This decision was followed on April 12, 1926, by another that completely reversed the original opinion.[5] The court now held that the provision of the 1910 amendment not only applied to amendments proposed by the initiative, but superseded the provision of the original constitution, and "meant that all constitutional measures, whether submitted by the legislature or directly by the people, ... should take effect when approved by a majority of the votes cast thereon."

Two weeks later, the secretary of state requested an official opinion from the attorney-general as to whether the amendment denying the right of suffrage to aliens "was legally adopted and is now in full force and effect." This was rendered on the same day, and closed as follows: "It is therefore my opinion that the amendment . . . became a part of the constitution of the state of Arkansas on November 2, 1920, and is now a part of the constitution."[6]

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The Make-up of a State Legislature. Herewith is presented a brief analysis of the personnel of the lower branch of the Kentucky legislature which met in January, 1930.

The political complexion of this particular Assembly was 66 Democrats and 34 Republicans, while the Senate had 24 Democrats and 14 Republicans. This is, however, not a fair indication of the political complexion of the state. For example, in the last fourteen years the

[3] Hildreth v. Taylor, 117 Ark. 465; 175 S. W. 40.
[4] Brickhouse v. Hill, 116 Ark. 513; 268 S. W. 865.
[5] Combs v. Gray, 281 S. W. 918.
[6] *Biennial Report of the Secretary of State, 1925-1926,* pp. 226-227.

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state has had two Republican governors and two democratic governors. During the same time, it has had one Republican in the United States Senate all of the time, and two for a part of the time. In 1920, Cox carried the state over Harding by a bare 4,000 majority, and a Republican candidate for senator defeated his Democratic opponent by a margin of 5,000. In 1924, Coolidge carried the state by 24,000 plurality in the presidential race, while in 1928 it went Republican by 177,000 plurality. The cause of the one-sidedness in Assembly membership is a very clever gerrymander. Whereas it takes an average of 26,000 people to make a Republican legislative district, only 20,000 are required for a Democratic district. In the Senate, the ratio is 50,000 to 73,000.

The method used in gathering the data for this article was very simple. A questionnaire was prepared and sent to each assemblyman in which he was asked to give the following data: (1) name; (2) address; (3) party affiliation; (4) education; (5) age; (6) married or single; (7) church affiliation; (8) fraternal orders; (9) luncheon clubs; (10) platform upon which he ran; (11) previous office held; and (12) previous legislative experience. Each question was phrased as simply as possible, and ample space was allowed for the answers.

There are some discrepancies in the results, due to the fact that some members did not answer all of the questions. However, the data are more than ninety per cent complete, and therefore adequate to give a fairly true picture of the group.

The first amazing discovery was that the median age of the body was 48 years—only four years less than that of the Senate. Eighty-six members were married, and 13 reported themselves single. One reported that he was a widower.

Only 95 reported their occupations. Of the number, 33 were farmers, 18 lawyers, eight merchants, five physicians, three newspaper men, three realtors, and three insurance men. The balance consisted of one or two of each of the following: contractor, barber, farmer-railway, clerk-teacher, live-stock dealer, minister-teacher, minister, railroad engineman, automobile dealer, farmer-timber dealer, miller, banker, banker-farmer, and railroad brakeman. Thus more than one-third were farmers, while four others gave farming as one of their varied occupations. Altogether, the farmer element made up 40 per cent of those reporting, while the lawyers were second with 20 per cent. The so-called business man was not very well represented, the proportion

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being less than 15 per cent. Of the professions other than lawyers, there was almost no representation, unless the newspaper men be thus classified. However, the 25 per cent outside of the three classes referred to seem to make up a very fair cross-section of society, with almost all of the common occupations and professions represented.

Of decided interest is the previous preparation of the members for their job. In the matter of education, 52 per cent laid claim to some high school training, while the education of 48 per cent was limited to some training in the lower grades. The writer recently had occasion to examine 50 applicants for firemen in a city of 60,000 people. The percentage of high school graduates applying was higher than the legislature's percentage in the same state. There were, however, 16 graduates of standard colleges, and 20 others claimed to have had some college or other special training in business schools or normal schools; one had attended a theological seminary. Thus, nearly 40 per cent laid claim to some college training. I have no comparable data on legislatures in other states, and am therefore unable to determine whether this is a high, low, or average record for educational qualifications. The fact that it appears to be on about the same level as that of police applicants indicates that, absolutely if not relatively, it is low.

If we are astonished at the showing as to educational qualifications, a greater surprise is in store when we examine the training of the members for the work that they were expected to perform, namely, the production of a fat volume of statutes for the state. From the reports made, 65 per cent never before sat in a legislature; and of the 35 per cent who had some experience as legislators, more than half had had only one term, which means 60 days, of such experience. Not only had 65 per cent had no legislative experience, but more than 50 per cent had never previously held any sort of office; and when the kinds of public office previously held were looked into, it appeared that the majority had held only such offices as school trustee, membership in a board of education, and justice of the peace. A few had served in town councils, but only six had held any major office. There were one ex-congressman, two circuit court clerks, and three county judges.

The charge is sometimes heard that legislatures are made up largely of gangs of politicians. The facts in the present case do not warrant such a conclusion. On the contrary, the body examined was a group of rank amateurs, and poorly educated amateurs at that.

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In the matter of fraternal orders, the members seemed to be almost unanimous joiners. Eighty per cent belonged to some such order. The Masonic fraternity alone could claim 50 per cent, while some reported membership in as many as five secret orders, the Ku Klux Klan not being mentioned. On the other hand, the Rotarians and Kiwanians were conspicuous by their absence. Only 10 per cent claimed membership in these mid-day oratorical societies. As might be expected, this percentage closely parallels the percentage of so-called business men found in the body.

Perhaps the most surprising discovery related to the matter of platforms. Only 16 of the hundred ran on a platform other than "honesty." Some of these 16 had several planks in their platform. But at that the platform range was exceedingly narrow. Eight advocated good roads; seven, better schools; four, lower taxes; four took a position for or against free textbooks; and one wanted lower automobile taxes. One deduces that issues play a much smaller part in elections than is generally supposed. The voter does not seem to vote for issues, but for men. He does not tie the hands of his representative by pledges on issues.

A few contrasts and comparisons with the Senate are of interest. The senators were, on the average, only four years older than the house. Seventy-five per cent of them had been to college, and 50 per cent were college graduates. Exactly 50 per cent were lawyers, as against 20 per cent in the Assembly. Nearly all had some previous experience in public office. Many had several years of legislative experience. Whereas the Assembly was dominated by farmers, the Senate was dominated by lawyers, the farmers, however, running second.

In summary, the personnel of the lower house of one of the sovereign states of the Union in the year 1930 presents the following picture: (1) the legislature is made up of mature men, responsible heads of families; (2) the lower house is amateurish and without experience; (3) it has meagre educational training; (4) it has the odor of the corn field, nevertheless is apparently dominated by the legal profession; (5) the boys all join something before they go forth to proclaim the faith of the fathers.

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NOTES ON ADMINISTRATION

EDITED BY LEONARD D. WHITE
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The Present Status of the Study of Public Administration in the United States. The annual review of public administration in the issue of the *Review* for May, 1930, prepared by Professor Leonard D. White, of the University of Chicago, referred to a study of research in this field then being carried on for the Advisory Committee on Public Administration of the Social Science Research Council. The resulting report was submitted by the present writer to the committee in October, 1930. An abstract of it, which may also serve in a partial way as a review of the developments in this field since the preparation of Professor White's article, is presented herewith. It is necessary to omit any extended enumeration of the details presented in the report, and to concentrate upon the statement of general tendencies and objectives.

The present status of research and study in this field in the United States is one of much interest and importance. On the surface, this is due to the great extension of public services, and the changed nature of governmental activities reflected in the greatly widened discretion given the administrative agencies. In order to permit the government to function effectively, the legislature has been led to confer broad powers on officials for applying general policies in specific cases. This adds greatly to the importance of questions of organization, personnel, procedure, and control. These developments, of course, only mirror more fundamental social changes inherent in the relation of the individual to the many social institutions which have evolved during the past two hundred years.

In any attempt to present an adequate historical introduction to this subject, one is at once struck by an outstanding need which the political scientist must be first to supply. We must all be impressed with the fumbling and uncertainty that mark our political activity when confronted by the challenge of the present economic depression. There are many competent persons with ideas and programs adapted to the situation in some measure; but the public mind is, and the bulk of our public leaders are, handicapped by a lack of civic tradition, and of

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any sense of the historical continuity of our administrative developments. Very little work has been done by the political scientist in reappraising our administrative history. He has failed to analyze calmly our administrative failures and the resulting social wastage; but even more has he failed to supply writers, journalists, and public leaders—let alone our college students—with any sense of the richness of administrative pioneering and achievement. A great opportunity for those who would develop a more adequate civic attitude exists in the richly varied materials, revealing the numerous local, regional, state, and national administrative achievements and leaders in public service and civic work generally. The new *Dictionary of American Biography* will be helpful here; but there is a great opportunity for including some emphasis upon this aspect of our studies in every university center, and in the programs of many civic organizations.

It is indeed probable that with our journalistic interest in the lurid scandals that occur (only occasionally diverted into a means for creative and revealing scholarship in such studies as *Chapters of Erie*, by Charles and Henry Adams) we have acquired an inhibiting sense of inferiority that is bad for us and for our students. For there is much from which to take courage and inspiration in the development of public administration in this country.

Certain phases, each worthy of extensive treatment, are to be discerned. The earlier tradition was that of a governing class that, on the whole, had a strong sense of its responsibilities. By 1840 the rise of factories and growth of cities made an extension of governmental services necessary, and these services required a more extended training for their proper operation. This movement, however, coincided with the extension of the suffrage, greatly increased immigration (with resulting cultural problems), and the growing pains of the new party system. The older governing class was toppling under the pressure of the West and new forces in the East. It is significant that in the decade 1850-60 the first steps toward a national recognition of the need for trained administrators—voiced, interestingly enough, by Secretary of State Marcy—came at the precise time that Macaulay and Trevelyan were instituting a plan in Britain instigated in part by recognition of the needs of the governance of India.

But the Civil War not only cut athwart these beginnings (to be noted in several states also); it exacerbated the problem because of the new political alliances as well as administrative problems. One can trace

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in early writings of Henry Adams the effort to revive the movement for administrative reconstruction. By 1880 it took a form that was moral and political; its objective was a purging of the parties. The assassination of Garfield dramatized this; and the subsequent passage of the Pendleton Act was followed by similar legislation in a few states.

The later threads which, woven together, make up the present texture of the movement are varied. There is the pressure for new social services that came from civic leaders in the cities during the nineties, requiring trained administrators in social work, education, parks, and other services to meet the needs of the "city wilderness" that was replacing the old frontier. There was the movement instituted by Frederick Taylor, first in the efficient use of tools, then widening as its implications were seen by the founder and others to include a scientific attitude toward the whole field of management and personnel relations; and there was the rise of such organizations as the National Municipal League and the American Political Science Association, which marked a recognition of a certain coming of age of American political institutions and of a substitution of critical examination for assured optimism.

Reflecting this atmosphere, the founders of the New York Bureau of Municipal Research in 1906 provided for the application of trained intelligence to the problems of city government. From this institution, influences radiated in the establishment of many similar institutions in all parts of the country, in the training of men to enter this field, and in the establishment of administrative surveys and survey staffs at Washington and in many states and cities. Results were often delayed; but substantial progress was made during the decade following the establishment of the New York Bureau, until another war brought successive shocks to the movement.

This time, however, there were influences which could be turned to good account. It was early discovered that modern war requires the regimentation of all national resources and institutions; and this requires skilled management. Hence the emphasis upon the development of employment management, of tests for predicting officer material, of central planning, of sound budgeting. Consequently, the past decade, despite the more sensational scandals, has seen a steady and quiet development of the field of public administration that would have seemed impossible thirty years ago. Nor can we omit the rise of

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great functional organizations in industry and commerce that are attacking some aspects of administrative problems, or the development of national as well as local civic associations interested in some phase of the public services.

The agencies and movements which have emerged from the developments here set forth so briefly must operate under certain conditions peculiar to this country, and of which we must take account. Our constitutional system, with its separation and division of powers, invites extra-legal associations for coördination and the fixing of standards common to all units of government. Time-space relations, changing with technology, have given us new units in the metropolitan area and the geographic region; the spoils system and the philosophy of *laissez faire* have given us supplementary public services in our social welfare and other organizations, as well as our bureaus of governmental research; our state and urban universities have supplied research facilities for many government services; while the rise of our great professional schools and organizations has helped to fill our higher promotional posts with trained technicians rather than a general "administrative class" after the British fashion. Finally, one important factor is in considerable part now eliminated. The successive invasions of immigrants have come to an end, the free lands are gone, and a period of physical stability which seems to lie ahead offers an opportunity for taking stock and planning under more static conditions.

Staff, Regulatory, and Advisory Agencies. It is useful to divide administrative machinery into the staff services, established to secure a better functioning of all the administrative departments and thus cross-secting them in operation, and the line or functional services charged with administering the health, public works, or other tasks undertaken by the public. The study of public administration is, indeed, sometimes construed as relating only to staff services; but this omits the important work being done by persons primarily concerned with the development of some functional policy and interested, therefore, in the problems of organization, personnel, and procedure of such a function. Nor should we omit in our study the problem of legislative-administrative relations, in view of the increasing rôle of the public servant in the determination of policy, through either the preparation of legislation or the making of rules under which general legislative policy is given meaning and application.

This latter aspect of administration has been unduly neglected. For

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twenty years the movement for administrative reorganization has proceeded upon the assumption that a centralized and responsible executive would supply a more effective political leadership also. But we are probably ready for a critical examination of our experience on this point, as well as a more extended inquiry into the intricate question of relationship between representatives of "pressure groups" (now being studied), the political heads, legislative committees, and permanent civil servants or semi-judicial administrative commissions. The older controversy over the "presidential v. the cabinet system" may perhaps be resolved in new forms with some promise of new insight into these questions in the future. Two points may here be indicated. The legislative reference library and bill-drafting service have developed in many states since the establishment by Charles McCarthy of the Wisconsin Legislative Reference Library; and some research, and the application of much research by others, now characterizes these agencies. Within the past year, too, the American Legislators' Association, drawing its membership from state legislatures and organized about functional committees upon which men of experience from without the legislatures sit also, has established headquarters adjacent to the University of Chicago, and it now plans to establish a nation-wide supplementary legislative reference service.

But it is chiefly in the staff services directly under the executive that most progress has come. The United States Civil Service Commission now possesses a special research division; the Personnel Classification Board has completed its study of the field services; while in the state and local personnel administration offices the conducting of studies of examination, promotion, and proeedure goes steadily forward. This movement is fostered and facilitated by the Bureau of Public Personnel Administration, a national staff for the Civil Service Assembly of the United States and Canada. Within the federal government, as well as within state and local governments also, in certain larger functional departments special administrative staffs have been established. Characteristic of this are the Army War College, or the training school for the Foreign Service, or the research staffs of state education departments. Similarly, within fifteen years the growth of budget staffs and central purchasing staffs has been remarkable. The latter are nationally organized in an association, and it is possible that the budget officers will also achieve some national organization in the near future. The studies by A. E. Buck and Russell Forbes

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report these developments in detail; while the current issues of *Public Personnel Studies* report the field of civil service administration in general. The work of the many special training schools or research staffs, however, is not generally known or appreciated, and is to be known only by a study of many professional journals and departmental reports.

There is some tendency for these services to be grouped within a general department of administrative control. This is approached, for example, in Ohio, Minnesota, Massachusetts, Wisconsin, and certain other states and cities, and such a department has been recommended for the national government. It is possible that greater impetus may be given this development if and when some more adequate solution of the relationship of such a powerful control agency with the legislature is found.

The rise of these important staff agencies has more recently been accompanied by the development of departments of the federal government—and to a lesser degree state governments—through which grants-in-aid are administered or advice and research made available to other governmental units or officials. This movement has much significance. The federal system is reported by Austin MacDonald in his *Federal Grants in Aid,* and is studied in some detail for health in Robert D. Leigh's *Federal Health Administration.* The Children's Bureau, for example, has conducted many research studies in the operation of state and local welfare departments, upon the invitation of the departments; the Public Health Service holds annual conferences with state and local officials, and publishes their proceedings and papers; while the work of the Bureau of Standards offers to many departments research facilities of many kinds. A comprehensive account of the services available to local governments maintained by the national government would reveal how extensive a development we have here in the study of public administration within the government itself.

Public Servant and Civic Organizations. The reference above to the effect of the division of powers in our constitutional system upon extra-legal organizations is readily documented by the development of the many associations of civil servants based upon functional interest. The annual sessions of these are sometimes reported in supplements to the regular columns of the *United States Daily.* Some of them are affiliated with civic associations in the same field of interest; the American Public Health Association is illustrative of this.

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Others enroll only department heads, such as utility commissioners, or technicians, such as highway engineers. Increasingly their emphasis is upon the pooling of experience and the establishment of standards of administration. Thus the American Association of Social Workers is attempting to enforce, through its qualifications for membership, higher standards in its field in communities where personnel work in the governmental service is inadequate; the International Association of Chiefs of Police, in collaboration with experienced staff members of governmental research bureaus, prepared a plan for reporting crime statistics, and within the year has been able to get the task of collecting and publishing these statistics each month placed by law in the Department of Justice; while the International City Managers' Association has a research committee and staff, and has established two fellowships for city managers. The National Federation of Federal Employees has contributed much to the development of a personnel policy at Washington during the past ten years, and its Committee of Fifty is directly interested in the status of research and of the scientist generally in the federal service. The Conference of Governors now has before it a proposal for establishing a secretariat which would supply research facilities; the National Association of Attorneys-General has voted to establish a permanent secretariat; and the development of the American Legislators' Association has been described above. Among the most effective of these organizations of public officials are the leagues of municipalities, often affiliated with state university departments of political science or research bureaus (although in New York the affiliation is with Syracuse University principally). These are federated through the American Municipal Association, which now has under consideration a plan for a central staff whose services in research, ordinance drafting, preparation of manuals, and publication will be available to all the member organizations.

The significance of this movement is apparent; it introduces not only new practices and techniques, but the attitude of inquiry and self-appraisal itself into the very governmental office and department through the public servant. It offers, through the organized groups, a point of affiliation and acquaintance at which public servant and research and university men can meet, with all that this promises in the way of training opportunities for advanced students or apprentices on the one hand and fresh insight into governmental practice for the teacher or publicist on the other.

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Space is lacking to describe here the many national societies which study the administration of specific functions and press for certain programs. Typical of these are the American Association for Labor Legislation, which has been conducting a study of labor-law administration in selected states, the National Recreation Association, the Isaac Walton League, the National Committee on Mental Hygiene, and the National Education Association. Many of these societies have large staffs of experts and engage in surveys and studies of the administration of a function for units of government. Similarly, certain foundations have organized or financed functional studies. Thus the General Education Board has instituted many surveys in public education, especially in the South; the Commonwealth Fund is at present conducting a study of the administration of workmen's compensation insurance; the same organization has financed other studies in administrative law which have already been published and are familiar to political scientists.

The significance of these functional organizations is at least twofold. They harness the energy and effort of the lay citizen to the tasks of government in a manner denied them in our constitutional system, so that those interested, let us say, in parks or labor legislation may, regardless of state lines or local units, coöperate in the study of problems and suggestion of solutions. In the second place, by financing staffs of experts in their chosen fields, they supplement the activities of the various units of government through surveys, advisory relations, and the presentation of suggestions and standards to legislatures, committees, and other official bodies. Here again a most interesting series of studies await the political scientist. Already, indeed, some account of this supplementary governing institution—the organized public servants and the civic associations—is appearing in the texts. The published studies of the American Public Health Association, the National Committee on Mental Hygiene, the National Recreation Association, the American Civic Association, and many other such organizations, as well as their working papers, offer invaluable material for any understanding of our contemporary administrative organization. That this is unknown to the foreign scholar, with his contempt for American government, is the more natural in view of our own failure to explore these developments. We have proceeded along anarchical and separatist ways, partly for the good reason that one attack upon our problem that promised much success was through the steadily

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rising standards of professional and functional societies, and the pressure of special interest in particular functions of government. We may well attempt now a more general appraisal, along with intimate examination of the separate parts of this movement.

The governmental research movement outside of the public departments has progressed steadily in the establishment of new institutes of research, the securing of interested support in local chambers of commerce, and an extension into state-wide, and even regional, organizations. The Governmental Research Association now possesses a representative membership drawn from these local organizations; an annual meeting called the National Conference on Government brings together the National Municipal League, the Governmental Research Association, the American Legislators' Association, the American Municipal Association, the National Association of Civic Secretaries, and similar organizations. Several of these societies join in supporting the Municipal Administration Service, an agency for supplying research services to its members. The Chamber of Commerce of the United States, through its finance department, has urged upon its membership an interest in budgets and financial methods, and has supplied local chambers with reports and studies. The National Industrial Conference Board has undertaken studies in public finance. The Bureau of Economic Research has, within the year, issued its report on the planning of public works. Here again, separate functional organizations supply special services; the Planning Foundation of America is illustrative of this. A National Committee on Municipal Standards, organized by the Governmental Research Association, the National Municipal League, and the International City Managers' Association, has within the year issued a study of measurement standards in the function of street cleaning (a study made in coöperation, characteristically enough, with the International Association of Street Sanitation Officials), and is now pressing on with parallel studies of other functions. The original impetus behind the old New York Bureau not only, therefore, has spread to the bureaus early established in Philadelphia, Detroit, Cincinnati, Chicago, Kansas City, San Francisco, and a hundred other cities and local units, but now is felt among the organized officials, chambers of commerce, and other groups. A great number of special journals now supplement the more general ones such as the *National Municipal Review* and the *American City*. Loose confederation of several of these associations, as indicated above,

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has been achieved, although there is no single dominant national organization.

It is well to attempt a brief appraisal of these several types of administrative research in public, semi-public, or functional agencies. The work done in the governmental offices has great advantages: it has official data available; it is undertaken by those close to the persons who will be able to apply the results; and it fosters a continuing attitude of self-examination. But it has suffered from the fact that since the war much of the development of staff work has been under the motivation of tax reduction regardless of social planning or effective supply of governmental services. It is handicapped by the difficulty of finding higher officials equipped to develop really significant research —a thing difficult to attain anywhere and at any time. Finally, the average public officer of any imagination and energy is apt to be very heavily loaded with his ordinary duties. However, the steady development of administrative studies by many federal bureaus (as mentioned above), the establishment of research fellowships by the New York State Tax Commission, the remarkable studies in finance and credit made by the research staff of the Federal Reserve Board, the increase in administrative research in the control departments of our states—all of these, as well as earlier experiences, offer useful examples of official administrative research which our new social and economic problems will undoubtedly require us to undertake.

The governmental research movement began as a militant and aggressive agency. It has made substantial contributions to administration—so substantial as even to win the praise of foreign observers. Its policy is now less militant; it seeks to coöperate with officials, give them credit for any results achieved, and limit its publication of reports. Partly due to this change, probably, it is more successful in winning over even the more critical official to sympathy and coöperation with new methods and policies. No longer a "spearhead of revolt," it is "boring from within." But the average bureau staff member must work under the pressure of immediate assignments of local application, and his unique experience, like that of the civil servant, is apt to be cut off from communication to other students of government. Both the civil servant and the governmental research staff member need opportunities for leave from official duties, and for travel, observation, and writing, if we are to have the most benefit from them and they are to contribute most to their immediate tasks.

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Here the affiliation of university, research council, or other type of organization with the civic association, governmental department, or research institute seems most justified; by associating these men and women with research opportunities, it is possible to demonstrate to legislative committees or department heads the added values created for the public by a fresh appraisal of a governmental problem or an opportunity for comparison of methods or the leisure for a long look ahead. A sign of healthy development and great opportunity here is the variety of our organizations; it may be possible for such an organization as the New England Council to stimulate this for its region, the Ohio Institute for a state, the Local Community Research Council of the University of Chicago to offer such a rallying point for a metropolitan district lacking in any governmental unity, a League of Municipalities to coöperate over a state area. Indeed, something of this nature is already under way in these and other centers.

The early contributions of the governmental research movement in the techniques of public management and the making of surveys are now paralleled by the issuance of books appraising observation and experience. Illustrative of this are the studies by Buck, Forbes, Upson, Willoughby, and others. A few organizations have stressed some aspect of the training and education function, notably the Brookings Institution (with which the old Institute for Government Research is affiliated), the National Institute for Public Administration, and the Detroit Bureau of Governmental Research. The Brookings Institution, indeed, is outstanding for its publication of studies and the greater opportunity offered for research of a "non-applied" type illustrated by the recent book on German administration by Blachly and Oatman.

The Universities. A summary of the materials relating to university work in this field may be brief, since most readers are familiar with developments here. Some generalizations may be hazarded. The study of administration, first recognized by Woodrow Wilson in an article published in 1887, emerged out of law and philosophy. Early in the present century, some basic descriptive studies of local and national political institutions were appearing to supplement this. The emphasis has shifted gradually to management-organization, personnel, finance, and similar activities. Meanwhile the rise of professional schools and societies, and their association with functional departments of government, contributed to the particularistic treatment of the subject which we now find. Schools of law, education, engineering, public

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health, medicine, social work, agriculture, and foreign service now supply much of the work in this field, while the schools of public administration which have been established generally interpret their field narrowly, as to content and objective, in training for staff positions in governmental research or government offices. The departments of political science have had different objectives placed before them. They must provide for a study of politics as a part of a liberal education for the layman; prepare a few students for teaching positions in political science; and offer some work—of undetermined content and range—suitable for those who seek a public career.

But here a complicating factor has arisen. As Professor Macmahon has indicated, higher administrative posts are usually filled by the appointment through promotion of a skilled technician of administrative abilities. Thus, most training must be secured through the professional schools of engineering, law, public health, education, and the like. We are challenged by a most interesting problem and opportunity. How can we provide, and at what time, for the kind of introduction to public administration suitable for those entering professional schools through which entry into public service is likely to be secured? Can some introductory work in this field of a sort designed to widen the outlook, stimulate the imagination, and set permanent critical conceptions in motion be established by political scientists with the object of reaching these professional students? Or should the university frankly enter the field of adult education for public servants by establishing institutes for those in government office and offering, perhaps in coöperation with foundations, research fellowships for civil servants and governmental research staff members? At this point, as indicated earlier, much experiment is desirable, and is now being attempted at many places.

Nor can we afford to overlook the opportunities offered by the supplementary governing class mentioned above, found in the local, state, and national civic groups with their public-spirited lay citizens. At some point in their college courses—invariably the undergraduate liberal arts course—we have an opportunity of introducing them to the rôle of administration in the Great Society, a task, as suggested at the beginning of this article, that we have too often neglected.

Under the pressure of these considerations, several interesting new developments may here be indicated. In many institutions—North Carolina, Virginia, California, Chicago, Michigan, Wisconsin, and else-

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where—councils for social research have been formed. Through these, some effort to integrate all work relating to social institutions is attempted; and we see a deliberate slowing down of the old current of particularism. Again, it is possible to discern a new emphasis, taking its place beside the older interest in law and management; it is placed upon social planning, whether for a state, a region, a metropolitan area, a group of cities, or a function applied through various units. This conception is being enriched, also, by the new interest in individual psychology. It is possible that from these varied interests and attacks some will be led to a consideration of the implications for political theory and philosophy of the new administrative developments and problems. It is to be hoped that we shall be led thus to search and appraise afresh comparative administration in the old world, in the new revolutionary states, and in the successive stages of our own historical development.

These new developments in the universities are generally related quite definitely to the organizations and associations mentioned above. Thus at Chicago, the Local Community Research Council has working relations with the International City Managers' Association, the Bureau of Public Personnel Administration, and many local and regional groups as well as other national societies. Many state universities are affiliated with the leagues of municipalities; at California, the Bureau of Public Administration entered upon its five-year program last July. This includes studies made in coöperation with several state departments and civic associations. The School of Public Administration at the University of Southern California was designed primarily for the several thousands of civil servants at the civic center. At North Carolina, the Institute for Social Research has taken primarily the state, incidentally the Old South, as its field of study. On the other hand, councils and institutes at Columbia and other universities emphasize primarily the needs and work of the individual scholar more than the study of a region, although one may note here again such coöperative studies as the Columbia series on post-war France.

Conclusion. It is suggested that in view of this extensive variety of institutions, as well as of the differing problems, challenges, and opportunities, the question of the organization of the field of research in public administration will not be answered by the establishment of any single comprehensive society. Tendencies have here been indicated that

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suggest a process of federation among some societies; great opportunities for widening the area of study and self-examination are suggested by the societies of public servants, in some affiliation with university social science research councils and national organizations of a civic nature. Probably some means for consultation and planning, for comprehensive long-time views, can be achieved by steady and patient conference with the leaders in the many existing organizations. One can discern the possibility of some crystallization about an institute in the field of public administration which will federate, rather than supplant, existing efforts and organizations.

Any such development must be accompanied by several studies which have intrinsic value of their own. We need an account of these supplementary governing institutions among the public servants and the civic associations; an appraisal of special regional problems and needs, such as those of the Lower South, or New England, or the Upper Mississippi Valley; a study of the whole question of training for the public service, both as now undertaken in universities, in the many (and little known) government training schools and courses, and as capable of establishment through various means for civil servants.

It is probable that the basic contribution of the university scholar in this field must be directed at historical, critical, and philosophical appraisals of tendencies and movements. It is significant that much fine work is done by men in the smaller colleges, and more opportunity could profitably be given by these institutions, or the larger universities at regional and metropolitan centers, in making the resources of the experience of the public servant or the civic association more freely available to them. We need more guidance from the academic observer, above the battle, concerning the new conditions in local areas of government, the problem of political leadership under the increasing professionalization of municipal and other services, and the relations of legislative leadership to the administrative departments with their wider discretionary powers. Not far ahead—indeed already present at some points—are other difficult questions of administrative law, which have aspects other than legal.

Within the past year we have been able to note the experience of other states with problems comparable to our own. The Russian "Gosplan" now impresses even our industrial leaders; the British government is extending its civil research staff, tentatively proposes an imperial economic secretariat, and has established committees to

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study the extension of administrative discretionary authority, the administration of unemployment insurance, and local civil service administration. The government of Dublin is returned to the electorate, Turkey experiments (briefly) with an official opposition, India and Britain confer over federalism. The League of Nations is perplexed by the status of its civil servants; are they exclusively an international agency, or nationals on leave? The publication of Professor White's *The Civil Service in the Modern State* is here a great aid to the American—and foreign—scholar.

Yet within our own borders we are offered a wealth of problems and possibilities. The present San Francisco charter drafting committee is considering a most interesting innovation in regard to the problem of political-expert relationship in city government. The spread of the idea of permanent staffs for civic and public servant organizations has been discussed above, and the conception of administration as the instrument through which all social services for a metropolitan area, a state, or a region can be integrated is taking root. These quiet and steady developments offer more for our consideration, probably, than the more widely reported White House Conference of last autumn. Meanwhile the problem of control over great basic factors in our economic life, such as power, marketing and finance, reflected in numerous reports of last year—New York, Massachusetts, New Hampshire, the Federal Trade Commission, the Federal Farm Board, and many others—brings powerful contenders into the political arena. The American political scientist cannot complain for lack of exciting and important tasks immediately at hand, or an audience hungry for some interpretation of what they imply.

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NOTES ON RURAL LOCAL GOVERNMENT

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The Crisis in County Government in Michigan. The power of the past is nowhere more apparent than in the field of rural local government. Those whose lives are rooted to the soil of a native town, township, or village have become immunized through the centuries to the advances of political science. It is a fair question whether rural local government today is superior to that of the Germanic, tribal mark, the Anglo-Saxon tunscipe, or the parish of seventeenth century England. Surely the mark, the tunscipe, and the parish were better adapted to the times than the modern township, village, and county to the tempo of the twentieth century. After all, it is not such a far cry from the township meeting in Michigan to the assembly of markmen which Tacitus describes in his *Germania*.

Yet no state can afford to ignore the forces that are now at work in the field of rural local government. The county manager plan is no longer pure theory. Both in Virginia and in North Carolina, counties employ officials known as county managers.[1] Most of these managerial positions, it must be admitted, are mere combinations of offices. It is probably fair to say that the structure of Davidson county, North Carolina, approaches an effective county manager plan.[2] Nevertheless, the advance has begun; the transplantation of the manager idea to the field of rural local government is under way.

Rural Domination of Michigan Counties. Rural local government in Michigan has as its basic element the township. The dominant features of county government are the long ballot, the decentralized administrative structure, and the system of township representation in county boards which makes for disproportionate representation of the rural areas. The root of the evil lies in the widening breach between a system of rural local government suited to a rural and agricultural

[1] *Cf.* Paul W. Wager, *County Government and Administration in North Carolina* (1928), and Wylie Kilpatrick, *Problems in Contemporary County Government* (1930).

[2] Kilpatrick, *op. cit.*, p. 638.

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state and the needs of southern Michigan, rapidly developing in industrialization and urbanization.

County government in Michigan is cast into a rigid mold by Article VIII of the state constitution. The boards of supervisors are still selected upon the basis of ward representation. The constitution requires a county board of supervisors "consisting of one from each organized township," and for such urban representation "as may be provided by law."[3] This automatically creates a large board of supervisors, with the exception of a few counties where the number of townships is small and cities are non-existent. The size of boards in the urban counties ranges from approximately twenty to 125.[4] They resemble conventions. It is impossible to conduct county government efficiently with such unwieldy boards, in session for brief periods after long intervals. In general, the representation of cities in these conventions is in accordance with a population scale fixed by the legislature.[5]

Undeniably, the system of township representation on boards of supervisors has led to the dominant rôle that the rural areas have played.[6] The power of the rural areas in county affairs is commensurate with the number of township supervisors. Washtenaw county is an example of this situation. The county contains twenty townships and two cities, Ann Arbor and Ypsilanti. Ann Arbor, with a 1930 population of 26,872, has seven supervisors; Ypsilanti, with 10,137

[3] Art. VIII, sec. 3.

[4] Here are some typical urban-county boards from the point of view of size: Bay county, 39 supervisors; Calhoun, 37; Genesee, 37; Ingham, 30; Jackson, 27; Kalamazoo, 22; Kent, 52; Muskegon, 33; Oakland, 45; Wayne, 125.

[5] Michigan, *Public Acts* (1923), No. 170. Cities of less than 3,000 have two supervisors; cities of 3,000 to 4,000 have three; cities of 4,000 to 15,000 have four; cities of 15,000 to 25,000 have five; cities of 25,000 to 35,000 have six; cities of 35,000 to 50,000 have seven; cities of 50,000 to 65,000 have eight; cities of 65,000 to 80,000 have ten; cities of 80,000 to 100,000 have twelve; cities of 100,000 and not more than 500,000 have one additional supervisor for each additional 10,000 or fraction thereof; cities of more than 500,000 have one additional supervisor for each additional 40,000 or fraction thereof. Some cities are still, however, represented on county boards in accordance with the terms of special charters granted by the legislature prior to the introduction of home rule in 1908.

[6] Michigan stands with New York, Wisconsin, and Illinois as one of the few remaining outposts of township representation on county boards. Cf. John A. Fairlie and Charles M. Kneier, *County Government and Administration* (1930), p. 111.

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inhabitants, has two supervisors.[7] The twenty townships, with a total population of 26,806, have, under the terms of the state constitution, twenty supervisors. Nine supervisors represent an urban group of 37,009, whereas twenty supervisors represent a rural population of 26,806. This situation can be defended only upon the theory that land as well as population should be weighed in the balance to determine representation.

It is true that Washtenaw county is as striking an example as could be found in the state. In many of the southern counties the situation differs only in degree; an urban majority is transformed into a minority in the county board of supervisors. The rural townships are represented far beyond the numbers which their population would warrant upon a perfect numerical apportionment.[8] Wayne county, containing Detroit, is always cited as an example of the urbanization of southern Michigan. Few stop to consider that such counties as Bay, Genesee, Ingham, Jackson, Kalamazoo, Kent, Muskegon, Oakland, and

[7] Under the general terms of Act No. 170 of 1923, which sets up a population scale in accordance with which cities receive representation on boards of supervisors, Ann Arbor should have six supervisors and Ypsilanti four. However, Ann Arbor was granted seven supervisors, one for each ward, by special charter prior to the home rule amendment, and this still controls the representation of the city. Ypsilanti's charter provides for two county supervisors, and this provision controls Ypsilanti's representation until it is amended to provide for the four members to which the city is now entitled. This is one illustration of some of the complexities raised by the exceptions included in the act of 1923, namely, "that wherever the representation of cities upon the board of supervisors of the county has been fixed by law it shall remain as now fixed until changed by charter provision. . . ."

[8] The statistics of representation for some of the counties follow:

County	*Urban Population*	*Urban Supervisors*	*Rural Population*	*Rural Supervisors*
Bay	48,935	23	20,541	16
Calhoun	56,399	17	29,993	20
Genesee	211,339	19	50,481	18
Ingham	85,360	14	30,999	16
Jackson	54,870	8	36,928	19
Kalamazoo ..	54,388	6	36,923	16
Kent	172,238	28	67,835	24
Muskegon ...	58,252	16	26,250	17
Oakland	113,359	20	97,042	25
Saginaw	80,409	24	39,935	27

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Saginaw are distinctly urban in character.[9] Only in four of all the counties of Michigan, *i.e.*, Bay, Genesee, Kent, and Wayne, is there an urban majority in the board of supervisors. Land is extremely well represented in county government.

No change is in sight at the present moment. It will take a constitutional amendment to deprive the individual townships of their county supervisors. The number of urban supervisors might be increased by legislative mandate. But in the state legislature the rural areas are disproportionately represented. The state constitution provides a representative for each county which has a "population equal to a moiety of the ratio of representation."[10] A constitutional amendment on reapportionment was rejected by the voters on November 4, 1930, by a majority of more than 100,000. This provided for a house of representatives of one hundred members elected from single-member districts containing "as nearly as may be an equal number of inhabitants." It would have given Detroit a representation of forty in a house of one hundred representatives. A dominant rural majority in the state legislature is naturally loath to increase urban representation in county boards. On the one hand, a decrease in the number of township supervisors is blocked by a constitutional provision; on the other hand, any decided increase in the number of urban supervisors will be thwarted by a rural majority in the state legislature. Until the constitution is amended, there is no possibility whatsoever of creating compact county commissions of three or five members elected at large. Except for the remote possibility of a county home rule amendment, Michigan counties will for years to come be saddled with large, unwieldy county boards, selected upon the basis of ward representation.[11] The present system of township representation upon

[9] Bay county is now approximately 71 per cent urban; Genesee, 74 per cent; Ingham, 74 per cent; Jackson, 60 per cent; Kalamazoo, 60 per cent; Kent, 70 per cent; Muskegon, 69 per cent; Oakland, 53 per cent; Saginaw, 67 per cent. These statistics include as urban three small cities in Genesee county and one each in Muskegon and Oakland which have a population of less than 2,500. This is the dividing line used by the census between urban and rural areas. The five small communities referred to are included in urban population because they are incorporated as cities and entitled to separate representatives on the board of supervisors. These figures are based on the press releases of the 1930 census.

[10] Art. V, sec. 2.

[11] On the cost of large county boards, see M. Slade Kendrick, *A Comparison of the Cost of Maintenance of Large and of Small County Boards in the United States* (Cornell University Agricultural Experiment Station, 1929).

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county boards makes any proposal to create county commissions elected at large something in the nature of a declaration of war by the urban areas against rural domination of urban counties.

Consolidation of Counties. While business corporations pile up gigantic combinations and mergers, county consolidation makes little progress. Much has been written in the past two years about the development of the county manager plan. No corresponding treatment has been accorded county consolidation. Possibly this is due to the tacit recognition by students of rural local government of the tremendous opposition to modifications of county boundaries. Obstructionist tactics and assuredly the loudest vocal complaints against county consolidation come from the court house rings which would thereby be dethroned. More formidable still is a very decided feeling in rural areas against mergers with "that crowd" in the counties to east, west, north, or south. When James county, Tennessee, voted ten to one to consolidate with Hamilton county, which contains Chattanooga, the country was pleasantly surprised. It was an unusual incident, in which debate over county consolidation was turned into action.[12]

Michigan continues to debate county consolidation. Already approximately eighty-five per cent of her population is drawn into thirty-five counties in the southern portion. The remaining fifteen per cent is spread thinly over forty-eight counties in the northern part of the lower peninsula and in the upper peninsula. Michigan has one block of nine adjacent counties with a total population of 47,031 and an assessed valuation of $31,585,890. This group must support nine county jails, nine court houses, nine probate courts, nine boards of supervisors, and nine complete sets of county officers. The burden becomes more staggering when other agencies of local government are considered. The nine counties are subdivided into ninety-three townships, fourteen cities and villages, and several hundred school districts. There are actually thousands of minor public officials. The maintenance of the governments handed down by the fathers untouched by reasonable consolidations in the region is fast becoming a luxury for which the people cannot pay. Out of total levies for state and local taxes amounting to $1,290,000 in 1928, this region was delinquent to the extent of $435,531, or more than one-third. This cannot be blamed on the mount-

[12] *Cf.* J. W. Manning, "County Consolidation in Tennessee," 17 *Nat. Mun. Rev.* 511 (Sept., 1928), and "Bigger and Cheaper Counties," 107 *Literary Digest* 10 (Oct. 18, 1930).

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ing costs of state government. The expense of local government constituted ninety-three per cent of the tax levy in this area.

The inevitable result of heavy local taxation in these nine counties seems to be the reversion of great blocks of land to the state itself. Private owners are slow to buy land when it is put up for tax sale. In 1929, land in these counties was sold at a tax sale for unpaid 1926 taxes amounting to $150,463. Of this tax sale land, only fourteen per cent was purchased by private buyers. For want of private sale, the remaining eighty-six per cent was bid in by the state.[13] The state as a whole shows a similar reversion under the pressure of local taxation. "Because of the rapid rate that cut-over and abandoned farm lands have been reverting to the state, Michigan now owns," according to a survey recently made by Senator Peter B. Lennon, of Genesee county, "or is in the process of obtaining, more than a fourth of the total area of the two peninsulas. Michigan has 36,000,000 acres. The property deeded to the state and on the delinquent tax list totals 9,150,000 acres."[14] The situation calls for a drastic reorganization and consolidation of the agencies of rural local government.

No more appealing argument for county consolidation can be presented than the following excerpt from the official proceedings of a county with one of the smallest populations: "Whereas, by reason of the closing of the [bank] in which the county funds are deposited and not available, it becomes necessary to borrow $1,000 in addition to the bond issue (a previous loan of $7,000) to complete the sheriff's residence and jail . . . be it resolved that . . . the said sum" be borrowed. In many respects this is a problem of education. State officials are naturally loath to press a consolidation movement that will upset the status quo and incur local hostility.[15] Until the people of these sparsely

[13] The statistics used in the analysis of these nine counties were compiled from official sources by Judge Arthur J. Lacy, chairman of the Property Owners' Division of the National Association of Real Estate Boards. *Cf.* his authoritative pamphlet on the finances of Michigan counties entitled *The Costs of Government* (privately printed, 1930.)

[14] *Detroit Free Press*, Dec. 8, 1930.

[15] The state constitution limits the power of the legislature to reduce the size of counties, but not its power to consolidate them. Art. VIII, sec. 2: "No organized county shall be reduced by the organization of new counties to less than sixteen townships, as surveyed by the United States, unless in pursuance of law a majority of electors voting on the question in each county to be affected thereby shall so decide." A movement by some state officials in 1929 toward county consolidation raised such a furor that it was dropped with despatch.

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settled areas believe that the advantages of consolidation will recompense them for the loss of the political units handed down by their fathers, little can be expected.

No reasonable man in the automobile age would map out the present jungle of small counties and townships in Michigan. How long must we be ruled by the doctrine that a county shall be of such size and its seat so located that a farmer can drive to the court house and back with horse and buggy between sunrise and sunset? The issue is squarely up to the inhabitants of these sparsely settled counties, meagre in valuation and dark in outlook. Nothing can alter the fact that consolidation of counties is fully as important as the rehabilitation of their governmental structure. The best governmental mechanism yet devised by man will be hard pressed to provide necessary administrative services for a struggling county of small population, low valuation, and meagre annual income. One of the most obvious needs of 1931 is the reorganization of county lines to coincide with regional units of economic, social, and political significance.

County Home Rule. The longer consolidation of counties is delayed, the stronger becomes the argument for county home rule. Michigan has had home rule for cities since 1908.[16] Why not home rule for counties? In so far as the counties are extremely diverse in size, population, valuation, and degree of urbanization, the home rule principle carries weight; in so far as they act as agents of the state, standardization and supervision appear essential. An effective compromise must be forthcoming. Allow counties home rule in the determination of their governmental structure and in affairs of purely local concern. State control must still be retained in matters of state-wide interest; but this control should become more administrative and less legislative in character.

In 1930, Michigan counties ranged from Oscoda with 1,728 people to Wayne with 1,888,731. Their economic and social conditions varied

[16] Const., Art. VIII, sec. 20: "The legislature shall provide by a general law for the incorporation of cities, and by a general law for the incorporation of villages. . .;" Sec. 21: "Under such general laws, the electors of each city and village shall have power and authority to frame, adopt, and amend its charter . . ." This was not a self-enforcing mandate. But the legislature has acted in good faith by laying down liberal provisions as to what shall, and what may, be contained in a city charter. This good faith has been continuous, for the legislature has frequently modified the general law of incorporation to conform more closely to the desires of the cities.

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from impoverished acres that had witnessed the passing of the lumberman to areas of great wealth built upon industrialization. The spread in valuation was from less than two million dollars to more than four billions. All in all, the diversification is astounding. Michigan has resort counties, agricultural counties, lumbering counties, mining counties, industrial counties, counties large and small, urban and rural. It is a vast array defying common treatment. Yet the state constitution decrees that there shall be elected biennially in each organized county a sheriff, a county clerk, a county treasurer, a register of deeds, and a prosecuting attorney.''[17] This rigid requirement of a long ballot, with the chief officials receiving a direct mandate from the people, automatically rules out any possibility of introducing effective county managers. The Jacksonian dogmas still prevail in county government. They are firmly embedded in the state constitution. The ancient shibboleth of separately elected administrative officials is now questioned by many. In county government the time is passing when any man can govern.

Home rule for counties has been unsuccessfully advocated in Michigan. A movement from 1919 to 1921 with that objective was a fiasco.[18] The amendment sponsored by a citizens' state committee provided that counties might ''frame, adopt, and amend charters for their self-government. . . .''[19] Debate over the proposed amendment was aroused, but little was accomplished.

The exponents of county home rule returned to the attack in 1929. On this occasion a constitutional amendment was carried through the state senate; but it stopped there. It read: ''The legislature shall provide by a general law for home rule for counties and under such general law any county may adopt by a majority vote of the electors voting thereon a charter for the conduct of county government. Such general law may permit a county in its charter to fix the number and manner of election of its board of supervisors and to fix the term and manner of selection of its officers other than judicial officers, including those provided for in the constitution. Execution of the powers and

[17] Art. VIII, sec. 3.

[18] C. Roy Hatten, ''The Movement for County Government Reform in Michigan,'' 9 *Nat. Mun. Rev.* 696 (1920).

[19] Citizens' State Committee, *How to Save Money for Michigan Taxpayers* (pamphlet, 1921).

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duties conferred by the constitution and general laws of the state shall be provided for in each county charter.[20]

A county home rule amendment would have obvious advantages. No county would be shackled with a type of government dictated by the constitution. The vital principle of local self-government would be respected. Counties electing to continue under the present system could do so. But the way would be clear for any county to experiment with the county manager plan. Oakland and Genesee county officials have shown an interest in the county manager idea. Under the present constitutional restrictions, they can do little more.

Picture for a moment a county manager plan in operation, with a small board of supervisors selecting a manager, who in turn would appoint the important officials of the county other than judicial officers. The scheme would be a direct breach of Article VIII of the state constitution. Until this is amended or a system of county home rule established, effective county managers cannot be set up in Michigan. Under the present constitutional provisions, Michigan counties must continue with bulky boards of supervisors, a large number of independently elected officials, a long ballot, and a disintegrated administrative structure.

County Manager Government for Michigan. From the point of view of administrative organization, the present system of county government in Michigan is woefully weak. At the biennial November elections, the voters in the typical Michigan county must select a judge of probate,[21] a sheriff, a county clerk, a county treasurer, a register of deeds, and a prosecuting attorney.[22] They select at the same time a county surveyor and drain commissioner.[23] A county school commissioner must be chosen quadrennially.[24] The constitution calls for the election of a circuit court judge every six years.[25] The judicial machinery is rounded out by the election of coroners and circuit court commissioners biennially in each organized county.[26] Most of the counties

[20] The chief objections to this amendment were that it made no provision for the consolidation or elimination of townships or for the consolidation of school districts.

[21] Art. VII, sec. 13.

[22] Art. VIII, sec. 3.

[23] Mich. *Comp. Laws* (1915), secs. 2479 and 4872 respectively.

[24] *Ibid.*, sec. 5878.

[25] Art. VII, sec. 9.

[26] Mich. *Comp. Laws* (1915), secs. 2470 and 12165 respectively.

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impose the additional burden upon the electorate of choosing a board of county road commissioners.[27] A further obligation in some of the urban counties takes the form of the election of a board of county auditors.[28] The supervisors are picked in the annual spring elections.[29] Such a jumble of elective officials defies the intelligence of the electorate. The party circle at the top of the party column encloses the bad with the good. The astounding fact is that the system operates as well as it does. The whole thing is defended by the court house group as the American type of representative government as handed down to us by our forefathers.

On the other hand, a suggestion of the county manager plan is met with the cant phrases that it is not American, that it is not representative, that it was not handed down by the fathers. The argument assumes a more positive tone. The manager plan, it is asserted, is autocratic and dictatorial; it is an offshoot of the German bürgermeister system; it smacks of the Prussianization of American political life. These are the stock accusations which were hurled at the city manager plan in its earlier phases. The standpatters intentionally or otherwise overlook the policy-forming county council selected by vote of the people, which is as significant as the manager. The opponents of the plan prefer to play upon the name "county manager plan." The scheme is technically the council-manager plan for counties, just as in municipal government the term "council-manager plan" is more accurate than the current "city-manager" designation. This is elementary to all students and supporters of the county manager plan. To some extent, the propaganda for the county manager plan could be aided by a wider use of the phrase "council-manager plan for counties."

But it seems doubtful whether the council-manager plan could ever become the success in Michigan counties that it has been in Michigan cities. The county is too deeply embedded in the political life of the

[27] Mich. *Comp. Laws* (Annotated Supplement, 1922), sec. 4352.

[28] In Wayne county, the board of auditors consists of three members elected for a term of four years at a salary of $8,000 a year. County of Wayne, *Manual* (1930), p. 70. Washtenaw county has a board of auditors selected by the board of supervisors. Mich. *Local Acts* (1927), No. 1.

[29] With the exception of certain cities in which the urban supervisors are selected by the city council, and others in which the charter designates specific municipal officials as county supervisors. Some cities use a combination of these two methods. The township supervisors must be elected annually. Art. VIII, sec. 18.

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state. The cities of Michigan have in many instances developed a high degree of non-partisanship. Yet the same urban voters who are non-partisan in municipal affairs remain partisan in county elections. There is no denying the fact that the court house group is the nucleus of the state party organization. It marches into action for national elections as well. Under the council-manager plan, the vast majority of Michigan counties would have a Republican council, a Republican manager, and Republican department heads. The matter would simmer down to this: Would the Republican party give a better administration of county affairs under the council-manager plan than under the present cumbersome mechanism?

It is worth while to work toward county home rule in Michigan, and the adoption of the council-manager plan for counties, with this proviso. The real struggle will begin when the first home rule council-manager charter goes into effect. The people can then hold their county councils responsible in a manner never before possible. With an electorate determined that the old order shall not persist under a new form, and with public spirited citizens running for the council, reform will be possible. With an apathetic electorate and a council of the old type of office-holder, the plan would soon be discredited.

Rural local government in Michigan faces a real financial crisis. Consolidation of the units of rural local government is one way out of the morass. Nothing can be done to reorganize the governmental structure of the counties without a constitutional amendment. In my judgment, this should take the form of a home rule amendment which will permit counties to adopt the county manager plan if they choose. These reforms could hardly produce a governmental system worse than the present one; they might avert the crisis and establish a system of county government infinitely superior in every respect.

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The Treaty-Making Power in Fascist Italy. Signor Mussolini's unequivocal refusal to coöperate in M. Briand's proposal of a United States of Europe and the intransigent policy adopted by Italy at the London Naval Conference of 1930 have again directed attention to the power which the Italian dictator possesses over the foreign policy of his country. The constitutional measures by which he has attained, and now holds, this power throw much light upon the Fascist régime.

In Italy, as elsewhere in Europe, the conduct of foreign policy has been vested in the executive, subject to but few constitutional limitations. However, whereas most European constitutions confer upon the legislature an ultimate control over the foreign policy of the government, this has never been the case in Italy. The *Statuto* of March 4, 1848, which today remains the nominal fundamental law, endowed the king with almost exclusive jurisdiction over foreign relations. It is the king who "commands all land and naval forces; declares war; makes treaties of peace, alliance, commerce, and other treaties, communicating them to the house as soon as the interest and security of the state permit," subject only to the limitation that "treaties involving financial obligations or alterations of the territory of the state shall not have effect until after they have received the approval of the houses."[1] Under the system of ministerial responsibility originally established,[2] these powers came to be exercised by the ministers, the king personally assuming the familiar position of the constitutional monarch. The ministers thus retained a control over foreign policy, including the termination of treaties, which was checked in law only by the requirement that treaties involving financial obligations or alterations in the territory of the state required the approval of the Chamber of Deputies and the Senate before they might be ratified.[3]

As in France,[4] treaties involving financial obligations were inter-

[1] *Statuto,* Art. 5. Trans. in W. F. Dodd, *Modern Constitutions* (Chicago, 1909), II, 5.

[2] *Statuto,* Art. 67.

[3] S. B. Crandall, *Treaties, Their Making and Enforcement* (2nd. ed., Washington, 1916), 320-323; L. Michon, *Les traités internationaux devant les chambres* (Paris, 1901), 373-389; Cmd. 6102 (1912), 13; Cmd. 2282 (1924-25), 31.

[4] A. Esmein, *Éléments de droit constitutionnel française et comparé* (8th ed., Paris, 1927), II, 201.

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preted as treaties which related to the expenditure, and not to the receipt, of public funds. Customs treaties, for example, dealing with customs receipts, did not come within the control of the legislature. A similar interpretation reduced the rôle of the legislature in connection with treaties involving "alterations" in the territory of the state. Thus, in 1889, when the legislature sought to attack the government for concluding the treaty of that year with Abyssinia relative to the adjustment of African frontiers, the government successfully maintained that the limitation as against altering the territory of the state related solely to continental Italy, and had no reference to colonial possessions.[5] As a result of these practices, the Italian legislature had become accustomed, even before the advent of the Fascists, to restricting its legal control over the conclusion of treaties—and over foreign policy as well—to treaties designed to take funds from the treasury and to those reducing the territory of continental Italy. Though differing in this particular, the Italian system closely paralleled the French in other respects.

Legislation of the Fascist régime has brought several important alterations in the legal position of the legislature. By law of December 24, 1925, the premier was made responsible solely to the king for the course of his policy.[6] The legislature was accordingly deprived of the indirect control over foreign policy that it might have attained through interpellations and other parliamentary devices. A law of December 9, 1928, accorded legal recognition to the Fascist Grand Council as a consultative organ which must be consulted before the adoption of any measure involving changes in the territory of the state or of the colonies.[7] Since the Grand Council is an organ of the Fascist party, under the control of the premier, and since members of the Council of Ministers are *ex officio* members of the Council, that body has acquired a remarkable degree of power and prestige. The object of requiring its consultation—and implied approval—is, of course, not to place additional checks upon the government, but to afford added security through party discipline that the will of the party will be enforced.

Of even greater significance is the law of January 31, 1926, which

[5] Miceli, *Il trattato italo-ethiopieo e diritto pubblico* (Perugia, 1890), 19ff.

[6] Art. 2. *Gazzetta ufficiale* (hereafter cited as G. U.), 1925, No. 2263; *La legislazione fascista* (Rome, 1929), I, 29.

[7] G. U., 1928, No. 2693; *La legislazione fascista,* I, 111-116; French text in *L'Europe nouvelle,* January 19, 1929; see also H. R. Spencer, "Political Developments in Italy," is this *Review,* February, 1929.

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granted to the government an enormous extension of the ordinance power.[8] This enactment authorized the premier, after due consideration in the Council of Ministers, to issue ordinances with the full effect of law (1) when authorized by the legislature, and (2) in extraordinary cases or "when required for reasons of absolute or urgent necessity." An ordinance, or "decree-law," so promulgated is to be presented to the legislature for its final ratification; but the interval between promulgation and ratification may be as long as two years. If the legislature fails to adopt a decree—which it has yet to do—the decree ceases to have effect from the date of its rejection only; the rejection is not retroactive, and does not invalidate acts undertaken while the decree was in force. The interesting history of this law shows that it was originally proposed by the government for the purpose of authorizing the issuance of decrees for the ratification and enforcement of international treaties dealing with financial expenditures and territorial adjustments.[9] In the Chamber of Deputies, this specific phraseology was replaced by the more ephemeral grant of authority to issue legal ordinances "for reasons of absolute or urgent necessity."[10] It is thus plausible to assume that in "urgent" cases, the government, by decree, will be enabled to ratify treaties containing financial or territorial stipulations without obtaining formal legislative sanction, since it is the government that decides the question of "urgency."[11] As a result of this legislation, those sections of Article 5 of the *Statuto* requiring the preliminary approval of the legislature for the ratification of these types of treaties—the only treaties reserved to the legislature—are negatived.

Summarized briefly, the Fascist régime has altered the treaty practice contemplated by the *Statuto* (1) by establishing a government independent of legislative control in the determination of domestic and foreign policy, (2) by establishing an organ of the Fascist party as an official institution, with authority over the conclusion of a limited number of treaties, and (3) by so increasing the ordinance power of the government that it may ratify and execute, without

[8] G. U., 1926, No. 100; French text in 54 *Annuaire de législation étrangère,* 57.

[9] *La legislazione fascista,* I, 75ff.

[10] The Italian "decree" used in this sense is synonymous with the French *décret* and the German *Rechtsverordnung.*

[11] On the law of January 31, 1926, see the interpretative articles in 18:1 *Rivista di diritto pubblico,* 49-64, 165-178, and 308-333.

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legislative concurrence, any treaty that it chooses. All of these alterations have been brought about by legal processes and serve as constitutional alterations in the fundamental law. But aside from the constitutionalities of the situation, the circumstances of the Fascist dictatorship and the control which the premier is known to exercise over the legislature are other factors that must be borne in mind.

Since the Italian constitution does not regard treaties as a part of the "law of the land," a distinction must be drawn between their ratification and execution. The procedure described above relates particularly to the power of ratifying treaties and establishing their international obligation, apart from municipal enforcement. A treaty is internationally ratified by the executive instrument known as the royal decree *(regio-decreto)* which, of itself, has no other legal force; internal promulgation and effect is given by a decree-law *(decreto-legge)*, which is an act of the government, not of the legislature, and which has the effect of a "legal ordinance;" formal legislative action, when required to give the treaty effect in the courts, takes the form of law *(legge)*, customarily ratifying the text of the decree-law. The decree-law and the law issue in accordance with the constitutional norms governing domestic legislation; the royal-decree ratifying a treaty issues in accordance with Article V of the *Statuto*, as modified by recent Fascist legislation.

From the constitutional definition and limitation of the treaty-making power, we may turn to the practice of the government. In interpreting the territorial limitations imposed upon this power, the Fascist government has followed its predecessors. The Anglo-Italian treaty of July 15, 1924, adjusting the East African colonial boundary to Italy's advantage, was ratified without legislative approval,[12] as was the treaty of January 27, 1924, with Jugoslavia relative to the acquisition of Fiume.[13] These treaties added territory to the non-contiguous colonial

[12] League of Nations, *Treaty Series* (hereafter cited L.N.T.S.), XXXVI, 380-ratified by Italy August 15, 1924 (decree-law no. 1547); ratifications exchanged May 1, 1925; submitted to the legislature for approval by law of July 15, 1926, no. 1587. This treaty incidentally throws light upon British practice, since the statute 15 Geo. V, c.7. was enacted before its ratification by Great Britain. See A. McNair, "When Do British Treaties Involve Legislation?," *British Yearbook of International Law* (1928), 58-68.

[13] L.N.T.S., XXIV, 32, ratified February 22, 1924, with legislative approval following on July 10, 1925 (no. 1512).

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area and to continental Italy, respectively, and as such were not regarded as altering the territory of the state.

The most important Italian negotiation of recent years culminated in the Lateran treaties of February 11, 1929, with the Vatican. The treaties and the concordat, involving both a reduction of the territory of continental Italy and a financial obligation, were submitted to the legislature for approval in the form of law before the instruments were ratified. The Chamber of Deputies had the project under consideration from April 30 until May 14, 1929; the Senate subsequently indicated its approval on May 25. Accordingly, the royal-decree of May 27, 1929,[14] ratified the agreements in behalf of Italy and prepared the way for the exchange of ratifications on June 7.[15]

Early Fascist practice in concluding financial arrangements has been obscured by the form in which the international agreements were concluded.[16] The situation has become clearer since the precedent of the Lateran treaties and concordat, and after the legislature gave its preliminary approval to ratification of the Italo-Ethiopian treaty of

[14] No. 851, following the law of May 27, 1929 (no. 810).

[15] *Bollettino parlamentare,* December, 1929, 760n. The handling of these treaties is an excellent illustration of parliamentary practice. The government project of law was presented to the Chamber on April 30, 1929; a special committee was appointed for its consideration, resulting in a report by Signor Solmi on May 10; legislative discussion took place on May 10-14, when the Chamber gave its approval. The project was received by the Senate on May 16; reported on May 23 by Signor Boselli; discussed May 23-25; and approved on the latter date. The approved project became the law of May 27, 1929 (no. 810), upon signature by the king, who then issued a royal-decree of the same date (no. 851) ratifying for Italy all of the agreements. Ratifications were exchanged at the Vatican on June 7, 1929. (A French text of the law of May 27, 1929, appears in *L'Europe nouvelle,* June 29, 1929).

In addition to the law authorizing ratification, several other laws were approved on May 27 relative to the marriage provisions of the Concordat (no. 847), and relative to the relations between ecclesiastical and civil officers (no. 848). Appointment of an ambassador to the Holy See necessitated the royal-decree of June 17, 1929 (no. 1146). The *circolare* of June 20 issued by the minister of justice (Rocco) carried into execution the penal provisions of the Concordat (*Bollettino Ufficiale* of the Minister of Justice, no. 21 of 1929). Military provisions of Art. 3 of the Concordat were specified in the *circolare* of the minister of war (Mussolini) July 18, 1929 (no. 419), *Giornale Militare Ufficiale,* disp. 38a of 1929.

[16] The Geneva Protocol of October 4, 1922 (L.N.T.S., XII, 392), guaranteeing a loan to be used in the financial reconstruction of Austria was not made con-

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August 2, 1928, which obligated the Italian government to contribute to the expense of constructing a highway from Addis Abeba in Abyssinia to the Italian port of Assab.[17]

A distinct change in the policy of the government in its attitude toward parliamentary participation in the process of treaty-making is to be observed in June, 1928. The Italo-German treaty of arbitration and conciliation of December 29, 1926, appears to be the first treaty submitted by the government for approval of the legislature before ratification since the beginning of the Fascist régime. The resulting law of approval of June 7, 1928, preceded the ratification of July 16, 1928.[18] Before this time, all international treaties had been ratified and carried into execution by executive decree. The legislature had merely to approve these decrees by "converting" them into laws. In 1928, however, the Fascist government, secure in its tenure of office, with a compliant legislature of its own choice, became more liberal in its policy. Since that time it has requested legislative approval before ratification of a number of treaties which would not ordinarily fall within the legislative competence. In addition to the Italo-German treaty of December 29, 1926, other examples are afforded by the Italo-Albanian treaty of defensive alliance of November 22, 1927,[19] the additional protocol of December 30, 1927, to the Austro-Italian commercial treaty of April 28, 1923,[20] the provisional commercial treaty of July 1, 1928 with Esthonia,[21] the Italo-Turkish treaty of neutrality and con-

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tingent upon ratification; government approval was indicated by its decree of January 7, 1923 (no. 411), but formal legislative approval was not given until February 10, 1927 (law no. 2173). The war debt agreements with the United States (November 14, 1925, 69 Cong. 1 Sess, Sen. Doc. 3) and with Great Britain (January 27, 1926, Cmd. 2580) were reached by an exchange of notes without ratification. Legislative approval was ultimately given to both by the laws of February 14, 1926 (nos. 246 and 180 respectively).

[17] L.N.T.S., XCIV, 423, ratified August 3, 1929, following the law of July 8, 1929 (no. 1299).

[18] L.N.T.S., LXXVIII, 383, ratified July 16, 1928, following the law of June 7, 1928 (no. 1291).

[19] L.N.T.S., LXIX, 341; approved by the law of December 18, 1927 (no. 2633), and ratified on December 23, 1927.

[20] L.N.T.S., LXXXVII, 109; approved by the law of December 31, 1928 (no. 3345), and ratified on February 18, 1929.

[21] L.N.T.S., LXXXVII, 277; approved by law on December 31, 1928 (no. 3422), and ratified on February 27, 1929.

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ciliation of May 30, 1928,[22] and the several international treaties of July 11, 1928, relative to the exportation of certain raw materials.[23]

On the face of things, recent practice in Italy is veering to the constitutional procedure proposed by Giolitti, then prime-minister, who in 1920 introduced proposals with the view of requiring legislative approval of all treaties.[24] The trend in this direction should not, however, be misconstrued. The government retains the clear legal and constitutional right of ratifying all treaties without any parliamentary approval; it has adopted a more liberal policy merely as a gesture which it may safely make in view of the strength of its support in the legislature. There is no record in recent years of the Italian parliament withholding approval of a proposed international treaty; nor, under present circumstances, is such action likely. Should the legislature, however, by any chance assume an independent attitude and commit the political sin of refusing its approval, the government could, and would, in all probability, resort to its prerogative and put an end to the interesting practice which appears to be gaining headway.

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Norway Moves Toward the Right. Losses by the Labor party—looked upon as one of the most radical of Western European labor parties—and gains by the non-socialist groups at the Storting elections on October 20, 1930, resulted in a notable, though not a decisive, move toward the right in Norwegian parliamentary politics. The move was a remarkable one in that the Labor party lost 12 of its 59 seats in the Storting; the Conservative party added 13 to the 31 seats it already held; and the Communists, who had held three seats, were unable to elect a single representative. The move lacked decisiveness, however, because the Laborites, in spite of their losses, still constitute the largest parliamentary party. At the same time, the popular vote registered for the party was the largest ever given to any Labor or

[22] L.N.T.S., XCV, 183; approved by law on December 31, 1928 (no. 3495), and ratified on April 29, 1929.

[23] L.N.T.S., XCV, 257, 373; approved by law on June 27, 1929 (no. 1033), and ratified on June 29, 1929.

[24] G. Giolitti, *Memoirs of My Life* (London, 1923), 415, explains his object in introducing the proposal of June 24, 1920.

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Socialist group in the history of Norway. The Conservatives did not take over the government, and the Radical government under the premiership of Mowinckel continued. While the Radicals joined with the other non-socialist parties in the fight against Labor, it advocates, nevertheless, a progressive social program. Furthermore, the present move to the right is not nearly so marked as was the move to the left in the last triennial election in 1927. The new Storting remains farther to the left than was the Storting before the 1927 elections.

The chief reason why this election deserves attention is that in it there were placed before a literate, alert, and intelligent electorate—representing a homogeneous people with a democratic background—vital issues involving the acceptance or rejection of an advanced socialistic program. The Laborites admitted that their party was a socialistic, and therefore in a broad sense a revolutionary, party. In fact, many of their leaders boasted of it and spoke with approval of the Russian experiment; some even hinted at a Labor dictatorship. While the party has no connection with Moscow, and was opposed by the small but vigorous Communist party, which is a member of the Third International, the labor platform clearly stated that the aim of the party is to prepare for and establish a socialistic society. Some of the immediate proposals of the party were: a heavy tax on all private fortunes; an inheritance tax so graduated as to fall heavily on large estates; the abolition of sales taxes; government aid to home-builders; greater government control of natural resources; repeal of laws hostile to trade unions; social insurance; raising of educational standards, including the furnishing of all school materials at public expense; and complete disarmament. Incidentally, the party favored the strict enforcement of liquor laws.

While the Labor party unequivocally advocated the adoption of socialism, each of the other leading parties just as clearly took a firm stand in support of the present capitalistic order. Alarmed by the marked increase in the Labor vote in the 1927 elections, and by the aggressive and well-organized campaign being waged by Labor, the Conservative, Radical, and Agrarian parties united against the common foe. Even the Radicals, who, on the basis of their traditions, might be expected to sympathize with a moderate socialist view, were emphatic in their opposition to Labor. Premier Mowinckel, the Radical leader, said several weeks before the election: "Overshadowing all

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other questions in this campaign is the fight against the Labor party.''[1]

In spite of their unanimity in combatting socialism, the three non-socialist[2] parties were by no means similar in program, constituency, or tradition. At the extreme right is Höire[3] (literally, the Right, but loosely translated as Conservative), organized while Norway was still united with Sweden, and with a program consistently favoring protectionism and *laissez faire*, and opposing innovation, including prohibition. Some of the most representative and influential of Norwegian leaders have been among its members. The traditional opponent of the Conservative party is Venstre (literally the Left, but loosely translated as Radical), which has championed low tariffs, government control of industry, unemployment insurance, and prohibition. It, too, has numbered some of the most prominent of Norwegian statesmen in its ranks, and, like the Conservative party, has a long and honorable record of service. The Bondeparti (properly translated Agrarian) is of more recent origin, the present organization being founded about 1920. Its opponents claim, and with some justice, that it is a class party. It draws most of its support from the rural areas, but much of its program is akin to that of the Conservatives. It is the only one of the four major parties that has not as yet formed a cabinet. Some of its members, however, have been in coalition cabinets.

The arch-enemy of all these, the Labor (Arbeider) party, was first established in 1887. It was later affiliated with the Third International. The present party, however, is a product of a combination of that part of the old Labor party which in 1923 broke its connections with Moscow and the former Social Democratic party, which was particularly powerful shortly after the World War.

The campaign was colorful and intensive. Loud-speakers, automobiles, and aëroplanes were called into service. House to house can-

[1] Quoted in *Arbeiderbladet* (Oslo Labor daily), October 8, 1930.

[2] *Borgerlige* was the term regularly used by both the socialist and anti-socialist press in designating the groups opposing socialism. Perhaps the phrase ''bourgeois parties''—or ''people's parties''—might be used in translation; but as neither is entirely accurate, the term ''non-socialist'' will be used when referring to the *borgerlige* parties.

[3] The members of the Storting are seated according to districts, like those of the Swiss National Council. Nevertheless, the terms Right and Left are used in the same sense as in German and French politics.

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vasses were made by personal interviewers, especially by workers representing the Labor party. The voters were bombarded with pamphlets, and the newspapers representing the various parties were filled with partisan propaganda. Through it all, however, there was no mistaking the issue. It would be hard to find a campaign in any land in which the lines were so clearly drawn between socialism and capitalism; and nowhere, not even in England, could any more complete freedom of expression be found. Each side was guilty of exaggeration, and the words "liar" and "hypocrite" were frequently used.

The non-socialists devoted most of their time and space to demonstrating the revolutionary character of the Laborites. "The Norwegian Labor party," said a prominent Conservative Oslo paper,[4] "has the same aim as the Russian Labor party—to establish a socialistic society." "Will Stalin be able to conquer a new province? Shall Norway now join the Soviet union?," asked a writer in the same journal.[5] Conditions in Russia were constantly described in the most unfavorable light. The Labor party was also pictured as an enemy of organized religion. While there is no evidence that the church as an organization took any direct part in the contest, there is no doubt that churchmen generally were strongly in sympathy with the non-socialist groups. The dangers of a dictatorship of the proletariat were emphasized, and several Labor leaders laid themselves open to attack on this point by speaking of the possible necessity of a dictatorship in making the transition to a socialistic state. The non-socialist press made constant appeals to the laboring class, stressing the point that the heavy taxes accompanying a socialist régime are in the final analysis paid by those who labor. The Oslo city administration, now in control of the socialists, was sharply criticized by the non-socialists as an expensive experiment, and was as heartily championed by the Laborites, who claimed gross mismanagement in Norwegian cities controlled by the Conservatives.

The leaders of the Labor party did not try to dodge the issue. They claimed to be a revolutionary party in the best sense, and admitted that the election was a choice between two political philosophies.[6] They insisted that the non-socialists were without a positive program, and

[4] *Ukens Nytt*, October 7, 1930.
[5] *Ibid.*, October 16, 1930.
[6] *Arbeiderbladet*, October 15, 1930.

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were trying to becloud the issues and terrorize the voters by talk about Russia and the menace to organized religion, thereby diverting attention from the deplorable conditions, including unemployment, existing in Norway under a capitalistic order. Unemployment in the richest country in the world—the United States—was mentioned as an indication of the failure of capitalism. The Laborites disclaimed any opposition to organized religion, and, in an endeavor to show that whenever the established order is threatened by a strong party the issue of religion is unfairly raised, printed in full an attack made in 1883 by the Conservatives on the Radicals, who in that earlier period were called enemies of the church and of Christianity.[7] Disarmament was also an issue, with the Labor party demanding complete adoption of it. The Conservatives—especially the militarists in the party—agitated for national defense, and the problems involved in the complete disarmament of a small nation were discussed in much the same way as in the memorable "disarmament election" in Denmark in April, 1929. The question of disarmament, however, did not become a major issue, and the election was in no sense tantamount to a referendum on it.

The spirited campaign was continued in the press up to and including election day, and public interest was so great that 85 per cent (estimated) of the eligible voters went to the polls or used the absent voters' ballot. In Oslo, 84.9 per cent of those eligible voted.[8] Citizens of both sexes over twenty-three years of age who have resided in the country five years or more may vote.

Members of the Storting, 150 in number, are elected by the list system of proportional representation. The country is divided into 29 districts, 18 of which are rural and 11 urban, with from three to eight members from each district. By constitutional provision, two-thirds of the total membership must come from the rural areas; hence the 18 rural districts choose 100 members. For the first time in Norwegian history, women have been chosen to full membership[9] in the Storting, by the election of a woman from Oslo and another from Bergen, both Conservatives. Very few women were found among the candidates, although Norway has had woman suffrage for many years.

[7] *Arbeiderbladet*, October 16, 1930.

[8] *Ukens Nytt*, October 22, 1930.

[9] In a few instances, women have previously been chosen as alternates.

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The following table[10] shows the results of the election as compared with the 1927 election:

	1927		*1930*			
	Popular Vote	*Members Elected*	*Popular vote*	*Members Elected*		
				Urban	*Rural*	*Total*
Labor	368,100	59	373,210	29	18	47
Conservative[11]	254,910	31	351,747	20	24	44
Radical	172,886	30	237,816	25	8	33
Agrarian	148,874	26	188,868	25	—	25
Communist	40,061	3	20,589	—	—	0
Radical People's party	13,413	1	9,384	1	—	1
		150		100	50	150

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[10] The figures for 1927 are taken from Paul Knaplund, "Norwegian Elections of 1927 and the Labor Government," in this *Review*, May, 1928; those for 1930, from *Ukens Nytt* and *Arbeiderbladet*.

[11] The figures for the Conservative party include the small Independent Liberal party, which coöperates closely with the Conservatives.

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NEWS AND NOTES

Personal and Miscellaneous

Compiled by the Managing Editor

Special Notices. The committee in charge of the program for the 1931 meeting of the American Political Science Association hereby requests the assistance of as many Association members as possible. Some may be engaged upon research studies which they would be willing to present for discussion and comment at one of the sessions. The committee would be very grateful to be so informed. It likewise urges members to offer suggestions concerning the content or procedure to be followed in developing the program. Communications should be addressed to the chairman, Professor John M. Gaus, of the University of Wisconsin, or to any other member of the committee (see p. 181 below).

The reorganized Committee on Policy of the American Political Science Association (see p. 179 below) has authorized its Sub-Committee on Personnel to proceed at once to reëstablish the personnel and placement service which was conducted a year ago experimentally. Although the announcement comes late in the year, it is believed that considerable help can be given persons who expect to obtain the doctorate in political science between now and next summer. For the time being, communications may be addressed to Professor William Anderson, of the University of Minnesota.

Professor Frederick A. Cleveland, who went to China with the Kemmerer mission and has since been made chief of the salt administration under the Nationalist government at Nanking, has resigned his professorship at Boston University.

Professor J. R. Hayden, of the University of Michigan, is serving, from November to March, as visiting Carnegie professor at the University of the Philippines. While in the Far East, Professor Hayden expects to revisit Korea and Formosa and to go to French Indo-China.

Professor George H. Sabine, of Ohio State University, has accepted a professorship of philosophy at Cornell University. He will continue to give part of his teaching and research time to political theory.

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Professor Clyde Eagleton, of New York University, will conduct Professor Quincy Wright's courses at the University of Chicago during the spring quarter.

Professor Pitman B. Potter, who since February, 1929, has been conducting courses and seminars in the Institute of Higher International Studies at Geneva, has returned to his work in the department of political science at the University of Wisconsin.

Professor Thomas H. Reed, who gave courses at Harvard in the second semester of 1929-30, is again in residence at the University of Michigan.

Dr. Albert R. Ellingwood has been promoted to a full professorship of political science at Northwestern University.

The governor of Michigan has appointed Professor James K. Pollock, Jr., a member of a commission which is to recommend changes in the election laws of the state.

At Iowa State College, Mr. Herbert C. Cook has been promoted from assistant professor to associate professor of government. Mr. J. E. Kellenbach is a newly appointed instructor in government, and Mr. W. L. Coons, an additional part-time instructor in history and government.

At New York University, Drs. Charles Thach and Russell Forbes have been promoted to associate professorships of government. Dr. Morley Ayearst, formerly at Princeton, has been appointed to an instructorship, and Messrs. A. J. McCorkle, of Princeton, and H. V. Thornton, of Oklahoma, have been made assistant instructors.

Mr. Roy I. Kemmel, a graduate student in government at Yale University, was elected to the Connecticut legislature last November in the Democratic landslide in which Dr. Wilbur L. Cross, former dean of the Yale Graduate School, was elected governor.

Dr. Ernest Trimble, of New York University, has resigned to accept the chairmanship of the department of political science at Lincoln University, Tennessee.

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Professor René W. Pinto has resigned his position at Valparaiso University to accept a research and editorial position with the Division of International Law of the Carnegie Endowment for International Peace.

Mr. Campbell B. Beard, formerly instructor in political science in the University of Texas, and more recently a graduate student and assistant in government at Harvard University, is an instructor in political science this year at Brown University.

Professor John R. Mez, of the University of Oregon, has returned from a six months' journey around the world, undertaken to study international political developments in Europe, India, and the Far East. While in China and Japan, Professor Mez lectured on international affairs before several universities, the Pan-American Club, and the Japanese League of Nations Association.

Union College announces that the following persons will give one lecture each on the Joseph P. Day Foundation during the present academic year: Professors Roland S. Morris, Harley F. McNair, Kenneth S. Latourette, William E. Mosher, Robert C. Brooks, Thomas H. Reed, and William E. Mikell, and Honorable William A. Prendergast.

Dr. Adam Shortt, long a Canadian member of the American Political Science Association and at one time a member of the Executive Council, died at his home in Ottawa on January 14, at the age of 71. For some years he was chairman of the Canadian Civil Service Commission, and at the time of his death was chairman of the Dominion Board of Historical Publications.

The Committee on Cultural Relations with Latin America, which, since 1926, has conducted a summer seminar at Mexico City, held a similar seminar on Caribbean problems during the second half of February. The group visited and held meetings at several points in the Caribbean.

Acting in pursuance of the report of the Royal Commission on Local Government, presented in 1929, the British Ministry of Health has appointed a committee to inquire into the recruitment, training, and promotion of local government officers.

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Early in January, President Cermak of the County Board of Cook county, Illinois, announced the appointment of thirty citizens to serve on a commission to work out a plan for the coördination and simplification of local governments in Cook county. The group will be known as the Citizens' Commission on Public Finance and Economy. Included among the members are President Robert M. Hutchins and Professor Charles E. Merriam, of the University of Chicago, and President Walter Dill Scott, of Northwestern University.

A regional conference of police chiefs was held at the University of Chicago on November 20 under the direction of Mr. August Vollmer. The meeting was attended by one hundred police executives, and a permanent regional conference was organized for the purpose of better police coördination. The movement has since been carried further under the direction of Chief Justice McGoorty of the Criminal Court of Cook county.

The Joint Committee on Municipal Measurement at the University of Chicago has substantially completed its program in the field of street cleaning and refuse disposal. It is now turning to the subject of police administration, and hopes to develop a method for the measurement of effective police work. This project is under the immediate direction of Mr. Donald C. Stone, with whom Mr. August Vollmer is coöperating.

The superintendent of schools of Chicago has appointed a Chicago Commission on Citizenship Education consisting of Professors Augustus R. Hatton, of Northwestern University, and Charles E. Merriam and Charles H. Judd, of the University of Chicago. The commission is financed by a grant of $5,000 from the Union League Club of Chicago and has undertaken an investigation of civic training in the public schools of the city.

Dr. John Bassett Moore, formerly American member of the World Court, was awarded the medal of the Hispanic Society of America for Arts and Literature in recognition of his writings in legal history at a luncheon of the Columbia University law faculty on December 2. In accepting the medal, Dr. Moore alluded to the fact that he is writing a series of volumes on "International Adjudications," two of which will soon appear. Dr. Moore was professor of international

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law and diplomacy at Columbia from 1891 to 1924, and was president of the American Political Science Association in 1914.

The seventh session of the Institute of International Relations was held at Mission Inn, Riverside, California, on December 7-12. Round tables, special conferences, and evening lectures covered a very wide range of topics and enlisted the services of numerous competent people, academic and otherwise.

The fourth annual session of the Institute of Citizenship at Emory University was held on February 10-13. The principal topic for discussion was the reorganization of state government in the South, but some attention was given also to the national civil service system, problems of central Europe, the League of Nations, and other subjects. The lecturers included Professor Manley O. Hudson, of the Harvard Law School, and Mr. T. P. Conwell-Evans, of London, England.

The third annual session of the Institute of Statesmanship, under the auspices of Rollins College, was held at Winter Park, Florida, on January 5-10. The sessions were devoted chiefly to discussions of our changing economic life as revealed in the progressive integration of American business and its apparently declining individualism. Among lecturers and conference leaders were Professors Harold R. Bruce, of Dartmouth College, William Z. Ripley, of Harvard University, and Kirk H. Porter, of the State University of Iowa.

The faculty of law of Northwestern University, administering the income of the Charles Clarence Linthicum Foundation, announces that a first prize of one thousand dollars and five second prizes of one hundred dollars each will be awarded to the authors of the best monographs submitted by December 15, 1931, on the following subject: A Comprehensive Critique of the International Chamber of Commerce Committee's 1930 Draft Convention for the International Protection of Industrial Property.

The comprehensive survey of the state of Maine made by the National Institute of Public Administration was delivered to Governor William T. Gardiner some months ago, and has been printed both by the press and in book form. During the autumn the governor

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organized a citizens' committee of six hundred members and held regional meetings in the larger cities of the state, at which members of the citizens' committee, legislative members, and representatives of the general public took part in discussing the Institute's recommendations. On the basis of this, the governor and his advisers prepared a program for submission to the legislature at its present session.

Beginning in January, 1930, the Committee on Uniform Crime Records, Mr. Bruce Smith, director, has published monthly bulletins on uniform crime reports. Four hundred police jurisdictions were represented at the outset, including practically all of the large cities, and in the course of a few months the number was increased to about eight hundred. In June, 1930, President Hoover signed the committee's bill formally establishing the National Division of Identification and Information in the Department of Justice and authorizing the Division to collect, compile, and distribute criminal information. Shortly thereafter, Attorney-General William D. Mitchell accepted the system of uniform crime reporting developed by the committee, and since September 1 the reports have been official and handled by the Department of Justice.

Dr. John W. Burgess, professor of political science and constitutional law at Columbia University from 1876 to 1912, and dean of the faculty of political science from 1890 to 1912, died in Brookline, Mass., where he was visiting, on January 13. Born in Giles county, Tennessee, in 1844, he served for two years in the Union army, afterwards returning as a student to Amherst College, from which he was graduated in 1867. He thereupon studied law and was admitted to the bar in 1869, but never practiced. After two years of teaching at Knox College, he studied history and public law at Göttingen, Leipzig, and Berlin, returning to Amherst as a professor in 1873 and transferring to Columbia in 1876. At the latter institution he attempted to introduce instruction in general public affairs in the Law School. Balked in this plan, he persuaded the trustees to permit him to set up a School of Political Science, which he founded in 1880. A celebration at Columbia of the fiftieth anniversary of the establishment of this school was mentioned in the last number of the *Review*. During his long academic career Professor Burgess served on several occasions as visiting professor at German and other European universities and was honored with decorations by two foreign countries. His publications

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included *Political Science and Comparative Constitutional Law* (1890), *The Reconciliation of Government and Liberty* (1915), *America's Relations to the Great War* (1916), *The Russian Revolution and the Soviet Constitution* (1919), and *The Transformation of the Constitutional Law of the United States Between 1898 and 1920* (1921).

A committee has been formed to plan and supervise the publication of fundamental sources illustrating the evolution of American law, with special attention to the unprinted records of the more important courts of the seventeenth and eighteenth centuries. The committee consists of Professors Evarts B. Greene, of Columbia University, chairman, Felix Frankfurter, of the Harvard Law School, Charles M. Andrews, of Yale University, and John Dickinson, of the University of Pennsylvania Law School, and Chief Judge Carroll T. Bond, of the Maryland Court of Appeals. Dr. Richard B. Morris, of the College of the City of New York, is secretary.

The social science exhibit of the world's fair to be held at Chicago in 1933 is in process of organization. The general committee appointed by the Social Science Research Council consists of Dr. E. B. Wilson, chairman; President Robert M. Hutchins, of the University of Chicago; President H. W. Chase, of the University of Illinois; Secretary R. L. Wilbur; Mr. Shelby Harrison, of the Russell Sage Foundation; Dr. Harold G. Moulton, of the Brookings Institution; and Professor Frederic L. Paxson, of the University of Wisconsin. Professor Howard W. Odum, of the University of North Carolina, has been selected as director of the social science exhibit, and will give full time to the work until the exhibit is completed. An advisory committee will be appointed. The exhibit is intended to be of a scientific character, but at the same time carrying a popular appeal. The underlying idea will be to show the progress in social organization during the last hundred years.

The University of Chicago has reorganized its graduate schools with the purpose of establishing four divisions, of which the division of the social sciences is one. In this division are coördinated the departments of education, economics, political science, history, sociology, anthropology, home economics, and geography. Each division will have a dean; for the social sciences, this official will be Dr. Beardsley Ruml. As a result of this reorganization, it is thought that there will be

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flexibility in the work of the graduate schools, although candidates will continue to be presented for advanced degrees by the respective departments. As an illustration of the type of modification made possible by the new arrangement, a committee on international relations has been established, consisting of Robert M. Hutchins, Quincy Wright, Ellsworth Faris, Samuel N. Harper, Charles E. Merriam, H. D. Gideonse, William F. Ogburn, B. E. Schmitt, Donald Slesinger, G. Taylor, and Jacob Viner. This committee will have the same authority to recommend for degrees as one of the recognized departments.

The fourth institute of municipal affairs under the auspices of the Bureau of Municipal Affairs at Norwich University, Professor K. R. B. Flint, director, was held on January 14-15, during the week following the opening of the General Assembly. Among subjects scheduled for discussion were municipal planning, public safety, education for public service, municipal finance, and the formation of a Vermont league of municipalities. A meeting of the New England City Managers' Association was held in conjunction with the institute.

A Public Administrative Clearing House has been incorporated in Illinois with an impressive list of sponsors, including ex-Governor Frank O. Lowden as chairman of the board of trustees, ex-Governor Harry Byrd as vice-chairman, Mr. Richard S. Childs as treasurer, Mr. Chester H. Rowell, and Mr. Louis Brownlow. The last-mentioned, it is announced, will serve as director and secretary. The new organization will seek to make available to all governmental units, public officials, and government research organizations in the United States and Canada the latest research results and other information and data of service to them in their work.

The American Legislators' Association has established headquarters adjacent to the University of Chicago, and its director, Senator Henry W. Toll of Colorado, has been appointed lecturer in the department of political science. A board of managers has been created; advisory boards have been appointed on legislative efficiency, administrative efficiency, courts, taxation, education and research, transportation and communication, health, mental hygiene and eugenics, crimes and criminals, social welfare, and agriculture and livestock; and house and senate councils, of five members each, have been set up in every state of the Union. The Association's organ, *State Government,* will hence-

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forth be published monthly, under the managing editorship of Professor Rodney L. Mott, of the University of Chicago, and will be sent to each of the 7,500 members of state legislatures. Every state is to be encouraged to maintain an adequate legislative reference bureau.

The second conference on the teaching of undergraduate courses in the social sciences, in a series which is expected to go on from year to year, will be held at Northwestern University on April 3-4. The first conference was held at Northwestern on April 18-19, 1930. One hundred and thirty-one instructors in economics, history, philosophy, political science, psychology, sociology, and anthropology were in attendance, representing fifty-six colleges in the Middle West. The first general session was devoted to a consideration of the general orientation course in the social sciences, with addresses by Professors Charles W. Coulter, of Ohio Wesleyan University, Lynn E. Garwood, of Coe College, Ferguson R. Ormes, of Wabash College, and George J. Cady, of Northwestern University. In the afternoon the conference met in five round-tables to discuss the introductory course in each of the social sciences. The questions to which particular attention was directed were: (1) What should the introductory course be? (2) What should it contain? (3) What is the best method of teaching it? In the political science round-table, Professor Karl F. Geiser, of Oberlin College, was the presiding officer, and the discussion was led by Professors O. Garfield Jones, of the University of the City of Toledo, J. J. Sherman, of the College of the City of Detroit, and Florence E. Janson, of Rockford College. The members of the conference were the guests of Northwestern University at a dinner in the evening, at which Dean James A. James presided and Dr. Alvin S. Johnson spoke on the making of the new *Encyclopedia of the Social Sciences*. At the final session the subject for discussion was: What constitutes a minimum college program in the social sciences? Professor John A. Lapp, of Marquette University, was the presiding officer, and addresses were made by Professors Waldo F. Mitchell, of DePauw University, A. W. Newcombe, of Knox College, John H. Farley, of Lawrence College, Howard White, of Miami University, Delton Howard, of Northwestern University, and E. H. Shideler, of Franklin College. The committee in charge of arrangements consisted of the following members of the faculty of Northwestern University: A. R. Ellingwood (chairman), J. W. Bell, I. J. Cox, Franklin Fearing, E. L. Schaub, and A. J. Todd.

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The International Institute of Public Law met for its fourth annual session in the chambers of the Faculty of Law, Paris, on October 16 and 17. The sessions received a great deal of attention throughout Europe and were attended by an unusual number of representatives of the press. The Institute has sponsored the publication of *Annuaire de l'Institut International de Droit Public,* containing a resumé of the important changes in constitutions and constitutional laws in the leading countries of the world during the year preceding publication. At the October meeting it was announced that a second volume of some 1,500 pages will soon be published. Professor Fleiner, of the University of Zurich, was elected president, to succeed Professor Jèze, of the Faculty of Law of Paris. The newly chosen members of the executive council are: Professor Jèze and Professor Barthélemy, of the Faculty of Law of Paris; President Lowell, of Harvard University; M. Politis, of Greece; and Professor Thoma, of the University of Bonn. Professor Jellinek, of the University of Heidelberg, Professor Bruns, of the University of Berlin, and M. Teissier, of the Académie des Sciences Morales et Politiques were made honorary members. Several new associate members were elected, among these being Professor H. J. Laski, of the University of London. The first three sessions of the October meeting were devoted to discussion of *actes de gouvernement.* Papers were read by Professor Duez, of the University of Lille, Professor Laun, of the University of Hamburg, and Professor Jellinek, who presented a paper prepared by Professor Smend, of the University of Berlin. The fourth session was devoted to consideration of popular referenda on legislation in parliamentary countries. Papers were presented by Professor Thoma and Professor Mirkine-Guetzevitch, secretary-general of the Institute, provoking a discussion which revealed no little difference of opinion as to the referendum's utility. Among members who joined in the debate were President Fleiner, Professor Jèze, and Professor John A. Fairlie, of the University of Illinois. In view of the unusual interest displayed, it was decided to devote the fifth annual meeting of the Institute to consideration of the popular referendum. The following were designated *rapporteurs* for the 1930 session: Professor John A. Fairlie, Professors Barthélemy and Rolland of France, Professors Jellinek, Schücking, and Kaufman of Germany, Professor Herrnritt of Austria, M. Gascon y Marin of Spain, and M. Vauthier of Belgium.

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The First Northern Political Science and Public Law Congress. On September 3-6, a group of some one hundred twenty professors and experts in political science and public law from Denmark, Finland, Norway, and Sweden met in the halls of the University of Stockholm. The purpose of the conference, as indicated by its temporary chairman, Professor Nils Herlitz (who, together with Dr. E. Fahlbeck and the Swedish society Norden, was to a large degree instrumental in bringing it about), was to give expression to the close relation between the fields of politics and law, to bring together the men who both in theory and practice deal with these subjects, and to build a new bridge uniting the Scandinavian countries, particularly the people in those countries who interest themselves in the teaching and application of law and government.

The gathering included not only professors and students of the northern universities, but also a number of men with long experience in the governmental affairs of Scandinavia. The permanent chairman, the University Chancellor Dr. Ernst Trygger, has occupied the posts of prime minister, foreign minister, and minister of justice in Sweden. One of the vice-chairmen, Dr. Rafael Erich, is the Finnish minister to Sweden, was formerly prime minister of Finland, and has more recently been chosen one of the deputy judges of the Permanent Court of International Justice. Another vice-chairman, Mr. Lars Oftedahl, is a member of the present Norwegian cabinet. The opening session, as well as some of the succeeding meetings, was attended by Prime Minister Ekman, Minister of Justice Gärde, and several other Swedish and Scandinavian statesmen.

At sessions held in the mornings and afternoons, papers were read, after which spirited discussion occurred, continuing at the luncheons and dinners. On one day the meetings were held at the University of Uppsala, and the delegates had an opportunity to see this venerable institution, one of the oldest in Europe and the world. The city of Stockholm entertained the members at an elaborate dinner in the city hall, and another memorable evening was spent on the grounds of the Stockholm Exposition.

The papers were of high caliber and wide variety. The meeting opened with a discussion by Professor Herlitz, of Stockholm, on the subject, "Characteristic Features of Swedish Public Law." The next speaker, Professor Frede Castberg, of Oslo, gave a particularly seasoned account of "The Power of Courts to Declare Laws Unconstitutional."

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In this paper, not only the situation in Scandinavia was traced but many cases familiar to the American political scientist and constitutional lawyer were mentioned, even some decisions of our early colonial courts. Other speakers were S. R. Björksten, of Helsingfors, who told "How Finland Developed into a Democratic, Parliamentary Republic;" A. Ross, of Copenhagen, who in a discussion of "The League of Nations and State Sovereignty" deplored the fact that so much emphasis has been placed by the League on the "equality of states" and held that the small states exercise a power altogether out of proportion to their actual importance. This was a rather surprising point of view to be taken by the representative of a small state, and it produced a somewhat spirited reaction in the Swedish press.[1] Another interesting paper was read by Professor Georg Andrén, of Gothenburg, dealing with parliamentarism in Sweden. In his discussion, Andrén, who is one of the four or five best known professors of political science in Sweden and a former Conservative member of the Riksdag, pointed out that parliamentarism in Sweden has not achieved the results that its champions have hoped for. There have not been powerful governments resting upon strong majorities in Parliament. Almost all of the ministries have been of the minority type, and since the autumn of 1917 nineteen months has been their average life. The Riksdag overshadows the government, and there has developed too great power on the part of the committees.

In the discussion following this address representatives of the other three countries traced the situation in their respective lands. Mr. Myer, of Copenhagen, stated that in Denmark there has been considerable increase of power on the part of the minister of finance, but said that the same has been true of the financial committee of Parliament. Criticism of the parliamentary system in Denmark is largely confined to those who are dissatisfied with the high taxes. In Norway, according to the minister of commerce, Lars Oftedahl, the situation is somewhat different. Before the introduction of parliamentary government, the committees of the Storting exercised great power; but since that time, development has been in the opposite direction, and now it is well recognized that, especially in affairs of the budget, the power should rest in the hands of the government. Even in Norway, however, the orthodox conception of parliamentary government, namely, that the government should rest upon the confidence of a

[1] See, for instance, *Nya Daglight Allehanda,* September 5.

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majority of its own political faith in the legislative body, has hardly been approximated. There is rather a negative conception, due largely to the differences within the parties in the chambers, which makes possible the building of governments supported by an absolute majority and which may have long tenure of office. Minister Erich of Finland recalled that in his country parliamentary government was not introduced until 1917, and that therefore there may be just reasons for the lack of faith which many as yet evidence toward it. The building of a government in Finland is frequently a difficult matter because of personal considerations, and the average life of a ministry has been only about ten months. The position of the president under the constitution, as well as the personal strength of the chiefs of state, has to some extent ameliorated these difficulties. One consequence of minority governments, however, has been that the party represented in the ministry frequently forgets all about its program in order to remain in office and not to risk its position. This, together with other features, has led to no little dissatisfaction with the existing régime.

At the last session of the congress, the question of permanent organization was discussed. It was felt by everyone that the continued coöperation of northern scholars and statesmen in these fields was both desirable and necessary, and that conferences similar to the present one might profitably be held every three or four years. A committee was created within each country to work in conjunction with the others in making further arrangements with this end in view. That the 1930 congress aroused considerable interest throughout Scandinavia was evidenced by the active collaboration of members of the four governments and the large amount of space given the proceedings, not only by the Stockholm press, but by the leading papers of outlying smaller cities.

ERIC CYRIL BELLQUIST.[2]

University of Uppsala.

Twenty-Sixth Annual Meeting of the American Political Science Association. By common agreement, the twenty-sixth annual meeting of the Association, held at the Hotel Statler, Cleveland, Ohio, on

[2] The writer, formerly a fellow in the department of political science at the University of California, holds travelling fellowships from the American-Scandinavian Foundation and the University of California for the study of government and politics in Scandinavia, and was present at the meeting described.

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December 29-31, 1930, was one of the most interesting and important in the history of the organization. The registered attendance was 317, as compared with 127 at New Orleans in 1929, 235 at Chicago in 1928, and 292 in Washington in 1927. The papers and addresses were generally of a high order, and the round tables, though in some instances overcrowded, were very successful. Exceptional zest, furthermore, was lent the entire occasion by the announcement of a substantial grant from the Carnegie Corporation, extending over a period of four and one-half years, for broadening the work of the Association.

The program, in full, was as follows:

MONDAY, DECEMBER 29

10:00 A.M. **Round-Table Meetings.**

A. *International Law and Relations.*
James W. Garner, University of Illinois, director.
Charles S. Hyneman, University of Illinois, secretary.

Monday: *Some Tendencies in the Development of International Law: Effects of the Covenant of the League of Nations and the Briand-Kellogg Pact.*
Quincy Wright, University of Chicago.
The Present Status and Outlook for the Codification of International Law.
Jesse S. Reeves, University of Michigan.

Tuesday: *Desirability of the Further Extension of the Empire of International Law Over the Fields of Economic and Commercial Relations.*
Charles G. Fenwick, Bryn Mawr College.
Recent Progress in the Development of Institutions and Processes for the Advancement of International Peace: An Evaluation.
Charles E. Martin, University of Washington.
National Control of Foreign Investments.
Walter H. C. Laves, Hamilton College.

Wednesday: *Trends Toward the Internationalization of the Control of Industry, Finance, and Commerce:*
International Organs of Control.
Joseph P. Chamberlain, Columbia University.
Forms of International Combinations and the Reasons Therefor.
Herbert Feis, University of Cincinnati.
International Control of Finance.
John J. Madden, New York University.

B. *Public Opinion and the Behavior of Voters.*
Arthur N. Holcombe, Harvard University, director.
Francis G. Wilson, University of Washington, secretary.

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Monday: *The Measurement of Public Opinion, With Special Reference to National Opinion.*
Harold D. Lasswell, University of Chicago.
Discussion led by: Stuart A. Rice, University of Pennsylvania, and Francis G. Wilson, University of Washington.

Tuesday: *The Interpretation of Elections, with Special Reference to the Recent German Reichstag Elections.*
James K. Pollock, University of Michigan.
Discussion led by: Roger L. Wells, Bryn Mawr College, and H. F. Gosnell, University of Chicago.

Wednesday: *What is Represented by Means of Proportional Representation, with Special Reference to Cleveland and Cincinnati.*
R. C. Spencer, Western Reserve University, and S. Gale Lowrie, University of Cincinnati.

C. *Political Theory.*
Francis W. Coker, Yale University, director.
Allan F. Saunders, University of Minnesota, secretary.

Monday: *Is There a Peculiarly American Theory of the State?*
Benjamin F. Wright, Jr., Harvard University.
Discussion led by: R. M. Maciver, Columbia University, and J. Mark Jacobson, University of Wisconsin.

Tuesday: *Possible Ways of Correcting or Limiting Democracy in the United States.*
William S. Carpenter, Princeton University.
Discussion led by: Walter J. Shepard, Ohio State University, and W. Y. Elliott, Harvard University.

Wednesday: *The Future for American Progressivism.*
Bruce Bliven, editor of *The New Republic.*
Discussion led by: Clyde L. King, University of Pennsylvania.

D. *Public Administration.*
John M. Gaus, University of Wisconsin, director.
Marshall E. Dimock, University of California at Los Angeles, secretary.

Monday (joint session with Round-Table F and American Association for Labor Legislation): *State-Federal Coöperation in Labor Legislation.*
Presiding Officer: Joseph P. Chamberlain, Columbia University.
Advantages of Federal Aid.
John J. Lee, Michigan State Supervisor of Industrial Cripple Rehabilitation.
Dangers of Federal Encroachment.
James M. Beck, National Association of Manufacturers.

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The Indestructible Union of Indestructible States.
Noel T. Dowling, Columbia University Law School.
Discussion led by: Bernard Shientag, Supreme Court, New York; Tracy Copp, Federal Vocational Rehabilitation Service, Washington, D.C., and Edwin E. Witte, Wisconsin Legislative Reference Library.

Tuesday: *Training for the Public Service.*
Discussion led by: Harold W. Dodds, Princeton University; Morris B. Lambie, University of Minnesota; Samuel C. May, University of California; William E. Mosher, Syracuse University; John C. Pfiffner, University of Southern California; and L. D. White, University of Chicago.

Wednesday: *The Outlook for the Study of Public Administration.*
Discussion of possible aids to the study of public administration through the development of the program of future round-tables in this field, through comparative studies in different parts of the country, through coöperation with various organizations, or in other ways.

E. *Legislatures and Legislation.*
Augustus R. Hatton, Northwestern University, director.
Martha Ziegler, Northwestern University, secretary.

Monday: *Is There a Crisis in Legislatures?*
Discussion led by: Carl J. Friedrich, Harvard University; James K. Pollock, University of Michigan; Robert K. Gooch, University of Virginia; Robert J. Bulkley, U. S. Senator from Ohio; Robert Crosser, M.C.; Chester C. Bolton, M.C.

Tuesday: *The Study of Legislatures.*
Discussion led by: H. W. Dodds, Princeton University; Herman C. Beyle, Syracuse University; Harvey Walker, Ohio State University; Martha Ziegler, Northwestern University.

Wednesday: *Technical Assistance to Legislatures.*
Discussion led by: Arthur A. Schwartz, Legislative Reference Division, Ohio State Library; William B. Belknap, Vice-President American Legislators' Association; L. L. Marshall, Ohio State Senate; W. A. Greenlund, Ohio State Senate; John A. Lapp, Marquette University; DeWitt Billman, Illinois Legislative Reference Bureau; Edwin E. Witte, Wisconsin Legislative Reference Library.

F. *Public Law and Jurisprudence.*
Edward S. Corwin, Princeton University, director.
A. T. Mason, Princeton University, secretary.

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Monday: Joint Session With Round-Table D and American Association for Labor Legislation. (See program for Round-Table D, above.)

Tuesday: *The Articulation of National and State Government.*
James T. Young, University of Pennsylvania.
Recent Developments in the National Police Power.
Robert E. Cushman, Cornell University.
Regulation of Super-Power.
Ben A. Arneson, Ohio Wesleyan University.
Discussion led by: T. R. Powell, Harvard University; Walton Hamilton, Yale University; and O. P. Field, University of Minnesota.

Wednesday: *The Nature of Legal Rules.*
John Dickinson, University of Pennsylvania.
The Relations of Courts and Administrative Bodies in Rate Regulation.
Richard J. Smith, Yale University.
Sovereignty and Law.
Walter F. Sandelius, University of Kansas.

12:30 P.M. **Subscription Luncheon.**

Presiding Officer: Frederic A. Ogg, University of Wisconsin.
General Topic: *The British Commonwealth of Nations.*
The Imperial Conference of 1930.
W. Y. Elliott, Harvard University.
A Canadian View of Imperial Relations.
F. H. Underhill, University of Toronto.

3:00 P.M. **Section Meetings.**

I. *The Teaching of Government and Politics.*
Presiding Officer: Karl F. Geiser, Oberlin College.
Measuring the Results of the Teaching of Government to Undergraduates.
W. E. Mosher, Syracuse University.
The Problem of Teaching Government in Teachers' Colleges.
Eugene Fair, President of Northeast Missouri State Teachers' College.
Some Recent Developments in the Method and Content of the Introductory Course in Political Science.
Russell M. Story, Pomona College.

II. *Comparative Government and Politics.*
Presiding Officer: Henry R. Spencer, Ohio State University.
The Personnel of French Cabinets Since 1871.
J. Gilbert Heinberg, University of Missouri.
Baltic Stability and Sharpening Revolution.
Malbone W. Graham, University of California at Los Angeles.
Political Revolutions and the Bureaucratic Culture Pattern.
Max S. Handman, University of Texas.

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III. *Colonial Government and Policies.*
Presiding Officer: David P. Barrows, University of California.
The American Policy of Native Development.
Raymond L. Buell, Research Director of Foreign Policy Association.
Some Aspects of British Native Policy.
Lennox A. Mills, University of Minnesota.
Dutch Native Policy in the East Indies.
A. Vandenbosch, University of Kentucky.

IV. *Local Government and Administration.*
Presiding Officer: Harold W. Dodds, Princeton University.
County Government in Metropolitan Areas, with Special Reference to Cuyahoga County.
Leyton E. Carter, director of the Cleveland Foundation.
County Government in Metropolitan Areas, with Special Reference to Wayne County.
Lent D. Upson, director of the Detroit Bureau of Governmental Research.
Measuring the Effectiveness of Governmental Services.
Clarence E. Ridley, editor of *Public Management.*

8:15 P.M. **Meeting Under Auspices of American Association for the Advancement of Science.**

TUESDAY, DECEMBER 30

10:00 A.M. **Round-Table Meetings.** (See program for Monday, December 29.)

12:30 P.M. **Subscription Luncheon.**
Presiding Officer: William B. Munro, Pasadena, Calif.
Progress Report From the Committee on Policy.
Thomas H. Reed, University of Michigan.
Recent Activities of the Social Science Research Council.
Robert T. Crane, University of Michigan.

3:00 P.M. **Annual Business Meeting of the Association.**
Presiding Officer: Benjamin F. Shambaugh, State University of Iowa.
Annual Reports of Secretary-Treasurer and Managing Editor of AMERICAN POLITICAL SCIENCE REVIEW.
Reports of committees and of Association representatives in other bodies.
Consideration of new plan for arranging programs of annual meetings.
Election of officers for 1931.

8:15 P.M. **Presidential Addresses.** (Joint meeting with the American Economic Association and the American Sociological Society.)

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Presiding Officer: Edwin B. Wilson, President of the Social Science Research Council.
Regional and Folk Conflict as a Field of Sociological Study.
Howard W. Odum, University of North Carolina.
Economic Conflict as a Force Making for International Peace.
M. B. Hammond, Ohio State University.
The More Than.
Benjamin F. Shambaugh, State University of Iowa.

WEDNESDAY, DECEMBER 31

10:00 A.M. **Round-Table Meetings.** (See program for Monday, December 29.)

12:30 P.M. **Subscription Luncheon.**
Presiding Officer: Chester Lloyd Jones, University of Wisconsin.
General Topic: *New Parties for Old.*
The League for Independent Political Action and Party Realignment in the United States.
Paul H. Douglas, University of Chicago.
What Hopes for a Party Realignment?
Edward M. Sait, Pomona College [paper read by Arthur W. Macmahon, Columbia University].
Bruce Bliven, Editor of *The New Republic.*

2:30 P.M. **Joint Session With the American Economic Association.**
Presiding Officer: Charles A. Beard, New Milford, Conn.
General Topic: *The Public Power Problem.*
Ernest Gruening, editor of the Portland (Me.) *Evening News.*
Ralph L. Dewey, Ohio State University.
Discussion led by: Halford Erickson, Standard Gas and Electric Company, Chicago, Finla G. Crawford, School of Citizenship and Public Affairs, Syracuse University; Martin Glaeser, University of Wisconsin; and Irston R. Barnes, Yale University.

6:30 P.M. **Subscription Dinner in Honor of New and Retiring Officers.**
Toastmaster: Charles E. Merriam.

The Secretary-Treasurer reported a total membership of 1,819, composed as follows: life members, 47; sustaining members, 34; annual members, 1,613; associate members, 125. Of the total number, 570 are libraries. It was explained that an apparent decrease of membership during the year was due to eliminating duplications and errors, and that in point of fact there was an increase of 32.

The balance sheet, operating account, and trust fund account for the fiscal year ending December 15 were presented by the Secretary-Treasurer as follows:

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BALANCE SHEET

December 15, 1930

Assets

Cash

In Bank—Checking Account	$ 601.60
In Bank—Savings Account	805.46
Petty Cash	4.71

Investments

U. S. Treasury Bonds	1,535.29
	$2,947.06

Liabilities

None

Cash Net Worth of the Association	$2,947.06

Operating Account

Income and Expenses for the Fiscal Year Ended December 15, 1930, and Estimates of Income and Expenses for the Fiscal Year Ending December 15, 1931

Income	*Year Ended Dec. 15, 1930*		*Estimates for Year Ending Dec. 15, 1931*	
Dues—Old Members—1930	$6,068.59			
New Members—1930	403.75			
Old Members—1929	220.75		Prepayments	$ 400.00
Prepaid for—1931	810.50		Delinquent	400.00
Total Dues		$7,503.59	Current	8,000.00
Special Contributions		135.00		135.00
Sales—Publications	245.09		$ 240.00	
Indices	8.00		10.00	
Mailing Lists	48.00		50.00	
Special Reprints	64.04	365.13	50.00	350.00
Advertising Contracts		429.47		450.00
Miscellaneous				
Royalties	2.05		2.00	
Interest	65.23	67.28	108.00	110.00
Total Income		$8,500.47		$9,845.00

Expenses *Review Costs*	*Year Ended Dec. 15, 1930*	*Estimates for Year Ending Dec. 15, 1931*
Printing	$5,162.55	380.00
Reprints	372.83	
Managing Editor—		600.00
Honorarium	600.00	$5,200.00

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Miscellaneous	$692.00		$690.00	
Travel	125.88		100.00	
Honorariums to Contributors	388.34	$7,341.60	400.00	$7,370.00
Secretary-Treasurer				
Clerical and Stenographic	900.00		900.00	
Stationery and Postage	258.56		300.00	
Traveling Expense	284.91		150.00	
Auditing	39.50		40.00	
Miscellaneous	138.08	1,621.05	100.00	1,490.00
American Council of Learned Societies—Dues		45.00	45.00	
Annual Meeting Expenses		194.35	200.00	
Miscellaneous		343.52	25.00	270.00
Total Expense		9,545.52		$9,130.00
Deficit for the Year		1,045.05	Estimated gain	715.00

Trust Fund

Cash on Hand in Fund—Dec. 15, 1929 (by previous report)		$765.60
Correction of 5c Error Balance		.05
Leaves		$765.55
Of this $25.32 was Accrued Interest on U. S. Securities, due Dec. 15,1929, but not collected until later		25.32
Actual Amount of Cash in Fund—Dec. 15, 1929		$740.23
Actual Collections for the Fiscal Year 1929-1930		
On U. S. Securities	$50.64	
On Interest on Trust Fund	14.59	65.23
Actual Cash in Fund on Hand—Dec. 15, 1930		$805.46

A protracted meeting of the Executive Council and Board of Editors on the 28th gave opportunity for an exceptionally full and spirited discussion of the Association's interests; and the annual business meeting was unusually well attended. The most important matters of business were those centering about the announcement by Professor Thomas H. Reed, for the Committee on Policy, that the Carnegie Corporation of New York had a few days previously voted to the Association a grant of $15,000 a year for four and one-half years (a total of $67,500), to be used in carrying out some of the proposals of the Policy Committee as adopted by the Association at the New Orleans meeting in 1929. In view of this development, the former

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Committee on Policy was discharged, and a new one was authorized, on lines indicated in the following action taken by the Executive Council and duly reported to the Association:

There is hereby established a Standing Committee on Policy, to consist of the President of the Association, the Secretary-Treasurer, and the Editor of the AMERICAN POLITICAL SCIENCE REVIEW, ex officio, and of a General Chairman and twelve other members. There shall be four permanent sub-committees of the Committee on Policy, on Research, Political Education, Publications, and Personnel, each consisting of a chairman and two other members designated by the Executive Council at the time of their appointment. The General Chairman shall be a member of all sub-committees and the ex officio members may associate themselves with any sub-committee.

The Chairman and other members of the Committee on Policy shall be appointed by the Executive Council on the nomination of the President of the Association, for terms of three years, provided that of the members originally appointed one-third shall be appointed for one year, one-third for two years, and one-third for three years, and the first General Chairman for three years; and further provided that in order to secure the immediate organization of the Committee on Policy the General Chairman first appointed shall be nominated by the President of the Association elected for the year 1930 and that the other members of the Committee shall be nominated by the President for 1930, the President for 1931, and the Chairman of the Committee on Policy, subject to the confirmation of the Executive Council.

The Committee on Policy shall make a report in mimeographed or printed form at each annual meeting of the Association on its activities and those of its sub-committees, and the Committee on Policy and its several sub-committees shall keep minutes of their meetings, which shall be presented annually to the Association as part of its annual report.

The funds of the Committee shall be kept by the Treasurer of the Association in a separate account and shall be disbursed by the Treasurer upon vouchers approved by the General Chairman of the Committee on Policy. Such disbursements must be in accordance with the appropriations made by the Committee on Policy and with the terms on which the funds were received. The General Chairman is hereby authorized to make such preliminary expenditures as are necessary in completing the organization of the committee and in holding one meeting of each sub-committee prior to the first meeting of the full committee.

The Committee on Policy shall have power to solicit further funds for its work and may authorize any of its sub-committees to do the same.

The Committee on Policy shall have power from time to time to create special committees for the consideration of matters referred to it by the Association or the Executive Council, or which in its judgment may demand the services of a special committee.

With the approval of the General Chairman, each of the sub-committees of the Committee on Policy shall have power to add to itself for particular purposes such associate members as it may deem desirable.

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The representatives of the American Political Science Association on the Social Science Research Council shall, as vacancies occur, be appointed by the President of the Association from among the members of the Committee on Policy.

The Committee on Policy appointed in accordance with the resolution adopted at the 1926 meeting of the Association is hereby discharged, with the thanks of the Association for its services.

The Association acknowledges with sincere gratitude the grant made by the President and Trustees of the Carnegie Corporation of $15,000 a year for four and a half years.

In pursuance of this action, the appointive membership of the new Committee on Policy was announced as follows: General Chairman, Thomas H. Reed; Sub-Committee on Research, W. F. Willoughby (chairman), C. E. Merriam, and C. A. Beard; Sub-Committee on Political Education, H. W. Dodds (chairman), W. B. Munro, E. W. Crecraft; Sub-Committee on Publication, B. F. Shambaugh (chairman), A. N. Holcombe, Isidor Loeb; Sub-Committee on Personnel, William Anderson (chairman), Luther Gulick, Harvey Walker. It is expected that the general committee and sub-committees will be organized for work in the immediate future.

At the annual business meeting the following officers of the Association were elected for the year 1931: president, Edward S. Corwin, Princeton University; first vice-president, C. A. Dykstra, Cincinnati, Ohio; second vice-president, Miss Belle Sherwin, Cleveland, Ohio; third vice-president, J. Ralston Hayden, University of Michigan; secretary-treasurer, Clyde L. King, University of Pennsylvania; members of the Executive Council for the term ending December 31, 1933; Ben A. Arneson, Ohio Wesleyan University; Raymond L. Buell, Foreign Policy Association, New York City; Harold D. Lasswell, University of Chicago; Edward M. Sait, Pomona College; Edward N. Woodhouse, University of North Carolina.

Upon nomination of the Managing Editor, the Board of Editors of the AMERICAN POLITICAL SCIENCE REVIEW was continued unchanged, except that the resignation of Dean Walter J. Shepard was accepted and Professor Charles W. Pipkin, of Louisiana State University, was elected to fill the vacancy. The Managing Editor raised the question of converting the REVIEW into a bi-monthly, and discussion in the Council and business meeting was highly favorable to this departure as soon as adequate financial provision can be made.

With a view to a broader basis for the preparation of the program of the next annual meeting, the Executive Council recommended, and

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the Association adopted, a plan under which, while primary responsibility continues to rest with a committee of five appointed by the President, each round-table and section at Cleveland was asked to designate one of its members to serve in an advisory capacity. The regular committee, as appointed by President Corwin, consists of Professors John M. Gaus, of the University of Wisconsin (chairman), William Anderson, of the University of Minnesota, W. Y. Elliott, of Harvard University, C. P. Patterson, of the University of Texas, and E. M. Sait, of Pomona College. The committee and a number of its advisers held a preliminary meeting at Cleveland. The business meeting also adopted a resolution under which all members of the Association are invited to send to the program committee for its consideration papers which they would like to present at the next meeting, or ideas or suggestions relating to such contributions.

The Association received a formal invitation to hold its 1931 meeting at Princeton University, and Washington was mentioned favorably. Decision, however, remains to be made by the Executive Council.

CLYDE L. KING, *Secretary-Treasurer.*

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BOOK REVIEWS AND NOTICES

EDITED BY A. C. HANFORD
Harvard University

The Revival of Natural Law Concepts: A Study of the Establishment and of the Interpretation of Limits of Legislatures, with Special Reference to the Development of Certain Phases of American Constitutional Law. By CHARLES GROVE HAINES. (Cambridge: Harvard University Press. 1930. Pp. xiii, 388.)

The importance of the history of ideas in interpreting contemporary civilization is increasingly evident. Man does not live by bread alone. To a very large extent he lives by virtue of a body of ideas, of which he is scarcely conscious, and the origin and history of which he rarely takes pains to examine. Contemporary political institutions and political behavior can be adequately understood only in the light of the ingrained ideas and beliefs which have been inherited from previous generations. Perhaps no single political idea has been as persistent throughout the entire history of the Western world, or today so dominates the course of political affairs, as that of a higher law. It is in tracing the history of this idea and exposing its significance for our own time that Professor Haines has written a really noteworthy book. This notion of a law higher than the ordinary positive law, and of superior validity, has taken protean forms. It is scarcely accurate to describe them all as "natural law," and the title of the work is perhaps just a little misleading in this respect. Most of the exponents of higher law doctrines today would strongly resent being described as adhering to a natural law. This latter concept carries too definitely certain seventeenth and eighteenth century connotations which are not elements in most versions of contemporary higher law doctrines.

The dominance of the positivist school of jurisprudence, particularly in England and America, during the past century has obscured the underlying persistence throughout this period of the idea that above and behind the law of the state there is a higher law. The notable work of John Austin in systematizing the theory of positive law gave currency to the idea that law is merely and solely what the state commands. The earlier systematic treatises on natural law were

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manifestly outworn and obsolete. Nevertheless the idea of a higher law persisted, and indeed, in spite of lacking systematic exposition, influenced men's action decisively, particularly in periods of crisis. "There is a higher law than the Constitution," declared William H. Seward, when confronted with the proposals of the Compromise of 1850.

Within the past generation, and particularly since the World War, there has been a very definite revival of higher law ideas, with a number of able systematic attempts at exposition. Stammler in Germany, Duguit in France, Krabbe in Holland have constructed significant doctrines of a higher law. The work of Harold J. Laski is all premised upon the theory that there is above the state and its positive mandates a body of basic individual rights, for the realization of which the state indeed exists and finds its *raison d'être*. Professor Vinogradoff, after profound studies of the genesis of law, came to the conclusion that it is not merely the product of the state, but arises, as the state itself, from fundamental human needs—is rooted, indeed, in human nature. Perhaps no single factor in reshaping a theory of law has been more important than the obvious need for some source of law superior to the state, if international law is to acquire that degree of binding force and effectiveness which alone can remove the menace of modern war.

The positive school of jurisprudence has been put definitely on the defensive. Its defense consists in insisting on the distinction between law and ethics. It readily admits that behind the law of the state there are higher moral imperatives. The state is itself indeed bound by these. But they are denied the character of law. This would appear to be a mere quibble over the use of the term "law," but the positivists maintain that it is something more. The science of law can only be developed, it is asserted, if the concept of law is confined to those norms which are clearly determinable; there must be an easily recognizable criterion, and this can be found only in judicial enforceability. The positivist contention thus becomes a plea for a particular methodology, the methodology of definition and analysis. But the scientific study of law cannot be confined to a single method—certainly not to that of definition and analysis—in this age when social phenomena are coming more and more to be studied genetically and historically.

Professor Haines devotes a considerable part of his work to an examination of the revival of higher law concepts in the United States.

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Here there has been practically no systematic work in the field of jurisprudence until very recently. Dean Roscoe Pound has indeed inaugurated a school of sociological jurisprudence which bids fair eventually to recast our science of law completely, and which embodies higher law concepts in insisting on penetrating behind the statute and judicial decision to examine the relationship between the rule prescribed by legislature or court and the economic and social requirements of the situation which it undertakes to regulate. But the curiously illogical fact is that, speaking generally, American theoretical jurisprudence adheres to the Austinian doctrine that law is simply and solely what is enforceable in the courts, while practical jurisprudence develops largely by means of higher law concepts. The doctrines of due process of law and the rule of reason are the most notable examples of these. The distinctively American system of judicial review rests to a large extent upon the idea that behind the law there is another, a higher law, to which the courts must give effect. In bringing this inconsistency clearly into the light, in demonstrating how indispensable this notion of a higher law is in American jurisprudence, Professor Haines has perhaps performed his most signal service.

The work exhibits a great wealth of learning. An abundance of footnote references to the literature and to the cases intrigues the scholarly reader to pursue the study farther. The book should be generally read by students of both political theory and constitutional law. May we not even hope that for the general reader who is interested in the history of ideas it will have much interest?

Ohio State University. WALTER JAMES SHEPARD.

County Government and Administration. By JOHN A. FAIRLIE and CHARLES M. KNEIER. (New York: The Century Co. 1930. Pp. xiii, 585.)

A general study of county government in the United States is beset with great difficulties. In the first place, the field is so diverse and so vast as to defy adequate assimilation by a single investigator. Not only are there in excess of three thousand American counties, often varying widely in structure, functions, legal responsibilities, and political importance, but constantly changing social pressures have placed the entire group in a more or less extreme and perpetual state of social flux. In the second place, aside from a few well known outlines, the general subject of county, town, village, and administrative district has

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received little more systematic attention from the political scientist than apologetic summaries in the last few pages of school and college texts. The result has been that local government as a "field" of scholarly investigation has a most slender bibliography to guide the research worker.

Part I of the volume under consideration ("Historical Development," 36 pp.) is a brief outline of the unfolding of local institutions from Anglo-Saxon times, through medieval England, colonial America, and the first century of the United States. Part II ("County and State Relations," 65 pp.) describes legal features of the county—its rights, obligations, and liabilities; its constitutional status as shown in provisions pertaining to organization, boundaries, area, home rule, finance, etc.; its responsibility to judicial control; and its relation to the state administration through the usual devices of centralization.

Part III ("Organization of County Government," 110 pp.) deals primarily with the legal, functional, and structural problems of the county board, as well as with the duties and responsibilities of county judicial, financial, and clerical officers. It concludes with a chapter on the place of the county in the party organization, and a discussion of the merit system and its accompanying problems as applied to county employees. Part IV ("County Administration," 201 pp.) pertains to county functions—justice, corrections and charities, health, education, highways, revenues, expenditures, and debts; and Part V ("Special Problems," 105 pp.) presents the problems of the "smaller areas" such as town, township, village, borough, and special administrative district, concluding with some twenty pages on county government in relation to metropolitan questions. An extensive bibliography (pp. 533-559), a table of cases (pp. 561-571), and an index (pp. 573-585) complete the work.

To do justice to the authors and at the same time to appraise the field left untouched is a difficult matter. There can be no doubt of the essential merits of the book; it is a contribution and a much needed one. A careful examination of the work leads to the conclusion that its main purpose was two-fold: first, to present as complete a picture as possible within a single volume of all aspects of county government, and second, thoroughly to annotate and document the study to serve as hand-book and reference guide to future investigators. The historical introduction of thirty-six scantily documented pages covering some thousand years of institutional history seems too slight to present any-

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thing at once suggestive and fundamental. The treatment throughout is predominantly legal; that is, although secondary materials are generously mentioned, the authors have relied heavily on court decisions and statutes for their primary sources. It is true that the vastness of the subject, as well as the purpose of the volume, probably precluded extensive field work, as well as a wide use of local reports, regional surveys, legislative journals, county histories, newspapers, etc.; but because of this the volume seems at times to lack reality; that is, it tends to give a statutory picture of legislative intent rather than of political practice. It appears to take little account, for instance, of the enormous difference that urban, semi-urban, and rural conditions might make in the application of identical rules, and lacks in places the grace, vigor, and human interest that closeness to a local institution so readily brings into a text. The authors, moreover, seem to recognize no fundamental change in the problem of the American county that might make the presentation of the subject quite different in form, emphasis, and source materials from that of a generation ago. The preface states that the volume is "an outgrowth from a briefer study . . . first published in 1906,"[1] and that the "present work is about three times the size of the earlier book." But, aside from a "more intensive" treatment, the approach seems much the same. "Older functions"—justice, corrections, charities, health, highways, education, revenue, etc.—are greatly expanded; but the "newer functions"—home rule, county managers, pensions, libraries, hospitals, and compensation laws, as well as the more significant implications involved in the increasing legal liability of the county (p. 55), in tendencies toward a redistribution of functions (p. 239), in the gradual pressure toward unified administration (pp. 293-298), and particularly the beginnings in new fields of social welfare (pp. 212 ff., 213 ff., 292 ff.), receive what would seem to some as little more than categorical mention.

But the surprising thing about the book is its apparent completeness. Whatever may be said about arrangement, emphasis, and general treatment—and there would be as many versions of each as there are reviewers—as a compendium of references on local government, it will serve the student as a starting point on almost any phase of the field for many years to come. It carries the impression that every discoverable condition pertaining to the government of the county and

[1] John A. Fairlie, *Local Government in Counties, Towns, and Villages* (New York: Th Century Co., 1906).

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its subdivisions is not only mentioned, but suggestively documented. A glance at the pages on the county manager (pp. 119-121), the county merit system (pp. 203-211), county specialized welfare work (pp. 290-293), county budgets (pp. 399-404), county accounts and reports (pp. 408-415), and city-county consolidation (pp. 511-523) will illumine the subject amazingly in its significant factual and bibliographical phases. The field of local government in the United States is much richer because of this volume, and its many suggestive channels for further investigation may well serve as a timely impetus toward the development of a hitherto comparatively neglected domain.

JOHN F. SLY.

University of West Virginia.

Problems in Contemporary County Government. BY WYLIE KILPATRICK. (University of Virginia: The Institute for Research in the Social Sciences. 1930. Pp. xxi, 666.)

One might be misled by the title of this book, for the volume contains an analysis of county government in one state only, i.e., Virginia. There is some comparison with the practice in other states; and certainly the conditions as described in Virginia are quite typical of the whole country. So this lends the book great value for the student of local government everywhere. And the book does indeed have great value. It is very thorough in its presentation of detail, some of which must soon be out of date; but it is saved from being a dull compilation of facts by the constant flow of keen observation and constructive criticism. Mr. Kilpatrick has done a splendid piece of work—quite the best that has come under this reviewer's observation.

The book may strike one at first as being ill-organized and not well balanced. In a volume of 650 pages dealing with county government, it is somewhat disconcerting to find the first chapter, of only twenty pages, apparently disposing of the important subject of "County Engineering and Highways." Chapter III offers fifteen pages on "Public Welfare," and the reader is left dissatisfied until he encounters Chapter XIX, dealing with "The Poor Farm and District Home." The author has a plan of organization for his book that is rather unique. But this small weakness, if it be one, fades away in the light of many excellencies.

Although the author shows no hesitation in suggesting specific reforms, he has made some thoughtful and penetrating observations upon

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certain underlying difficulties which reformers rarely think about. He finds the county seldom well adapted to do each of the various things which counties are supposed to do (p. 17). And an excellent chapter is devoted to the economic capacity (or incapacity) of the various counties to perform the functions which a uniform law imposes upon them all. He brings out the idea of the injustice that lies in the equal treatment of unequals. The variation in economic capacity is made clear through voluminous tables of statistical data. He shows a spread of three hundred per cent in the ratio of expenditure to wealth.

The author heaves the customary academic sigh over public apathy in matters of local government, especially as regards public health and charities. But he does not let the matter rest with exhortations about cultivating a livelier sense of civic responsibility. Throughout the work there is a constant effort to offer workable solutions. And one suspects that the author himself does not realize how frequently he falls back upon effective state control as the remedy for a bad situation.

"Local self-government" is found to be an obsolete phrase; and on the other hand direct state administration is deplored. Attempts to classify functions as state or local are thought to be futile. The state-county problem is to be solved through integration. "Thus we do not have county officers to perform state functions. We have officers who are local citizens, administering state policies by adaptation to the county, either in exact application or in elaboration by local programs (p. 556). . . . . the execution of state and local government is essentially a concurrent process" (p. 561). This is not entirely convincing, and it may exhibit the author's reluctance to accept some of the conclusions to which his own splendid researches have brought him. Almost in spite of himself, he seems to tell the story through every chapter that there *is* such a thing as local self-government, that it is failing miserably as respects the functions that always have been exercised through counties, and that state administration is the remedy. Of course this comment has no reference to the feasibility of home rule for municipalities, for consolidated city-counties, or for rural municipalities such as Theodore Manny considered in his recent book of that title.

Finally, Mr. Kilpatrick gives only half-hearted support to the county-manager idea. He truly declares it has never really been tried, and analyzes the North Carolina law to illustrate the point (p. 638). There have been clerical managers, and engineering managers, and financial managers; but no honest-to-goodness manager in any county. And a

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reason for the unwillingness to establish a real county manager who would supervise the various county functions is suggested at p. 643: "The same desire for efficiency in administration that is the goal of the managerial form is the motive that is driving industrial corporations away from one-man management."

This book is a fine piece of work. It is scholarly, thorough, sober, and flowing over with well balanced criticism and constructive suggestions.

KIRK H. PORTER.

State University of Iowa.

Municipal Government and Administration in Iowa. BENJAMIN F. SHAMBAUGH, EDITOR. Iowa Applied History Series, Volumes five and six. (Iowa City: The State Historical Society of Iowa. 1930. Two volumes. Pp. xi, 608; xi, 668.)

For many years, students of local government have watched the work of the State Historical Society of Iowa with interest. Not only have its publications been skillfully edited and effectively presented, but the work itself has been done with exceptional care and thoroughness. The project, moreover, known as the *Iowa Applied History Series* was the first study designed to present a comprehensive description and critique of the contemporary political devices of an American commonwealth.

The volumes under consideration are a part of this steadily maturing plan. They are composed of a series of twenty-two monographs written by eleven different authors, under the general direction of Professor Shambaugh in his capacity as superintendent and editor of the State Historical Society of Iowa. Volume I begins with two chapters on the creation, dissolution, and legal status of municipal corporations in Iowa. Chapters III, IV, and V discuss the municipal electorate, the city council, and the mayor. The next six chapters treat the leading municipal officials—city manager, clerk, assessor, treasurer, solicitor, engineer, and conclude with two chapters on minor officials, boards, and commissions. Volume II covers the same field from a functional standpoint, *i.e.*, finance, justice, safety, public works, utilities, planning and zoning, and public health, and concludes with two chapters on the Iowa municipalities in their relation to public schools and poor relief, and the work and development of the League of Iowa Municipalities. An exhaustive bibliography in the form of notes and references and an elaborate index complete each volume.

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The hope expressed by Professor Shambaugh in the preface "that these pages may suggest the problems of the municipalities and to some degree point to their solution" is a modest appraisal of their value. As a permanent documented record of municipal government and administration in Iowa, the volumes will take an important place in solidifying that political consciousness which proves so steadying in institutional developments. Placed in the hands of any Iowa municipal official, moreover, they would serve, not only as an elaborate manual on the municipal government of his commonwealth, but as a guide to sound practices in local statesmanship as well. The essay, for instance, by Dr. Ruth A. Gallaher on "The Administration of Municipal Finance" (Vol. II, ch. XIV) is an unusual combination of code, practice, and principle that offers an example of applied politics at its best. Indeed, one of the marks of the whole work is its touch of reality; experience, field work, inquiry, and questionnaire have entered heavily into the preparation of the chapters.

There are parts that would be of general interest to any student of municipal government. The essays by Dr. Jacob A. Swisher on the "Creation and Dissolution of Municipal Corporations" (Vol. I, ch. I) and "The Legal Status of the Municipality" (Vol. I, ch. II), Dr. John M. Pfiffner's chapter on "The City Manager" (Vol. I, ch. VI), Dr. John W. Manning's "Municipal Planning and Zoning" (Vol. II, ch. XIX), and Dr. Swisher's "The League of Iowa Municipalities" (Vol. II, ch. XXII) give "close-ups" of municipal devices and principles that would illumine any general discussion of the subject. As a whole, the project is suggestive of a program that may well commend itself increasingly to other states.

JOHN F. SLY.

University of West Virginia.

Our Criminal Courts. By RAYMOND MOLEY. (New York: Minton, Balch and Co. 1930. Pp. xxiii, 257.)

This volume supplements *Politics and Criminal Prosecution*[2] and affords the author opportunity to cover a considerable part of the field of criminal law administration. His preparation is unexcelled, for he has participated notably in a number of local and state surveys over a period of ten years. In fact, no other person has more immersed him-

[2] For brief notice, see this *Review*, Vol. 24, p. 209 (Feb., 1930).

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self in this field. Moley is both lawyer and political science teacher. The present work is best described by him as "a series of essays," buttressed by some quotations and numerous references. "It seeks no solution, prescribes no remedies, formulates no program of reform." With this limitation and explanation, the author seeks to forestall the disappointment which some readers will feel when they seek definite and authoritative opinions on many problems. The disposition to be "scientific," to withhold final judgment, is meticulous. The words "science" and "scientific" occur too frequently in view of the nature of the subject, which finally, after all investigations, eludes exact mensuration. But the material for opinions is plentiful.

The first part, "Preliminaries to Trial," deals with the police courts of the larger cities and the lawyers who frequent them. In the second part, entitled "The Long Day in Court," we find the matters of rules of procedure, jury trial, the defense of insanity, and probation and parole. In the final part there is consideration of the part played by newspapers, the importance of statistical data, the work of several survey commissions, and (perhaps the most original and significant part of the book) a discussion of the personnel available for the criminal court bench.

The book is valuable as an individual synthesis of a whole decade of campaigning against crime. Lawyers who were early interested in the subject presumed that the prevalence of crime under the most perfect government ever achieved was due chiefly to faulty rules of procedure in criminal trials. By spending vast sums of money we have discovered that only a few cases ever reach trial, and that those that attain the pinnacle of publication in the reports are, in numbers at least, insignificant. We have learned that our unsupervised and political magistrates and our political and unsupervised prosecutors determine the fate of most cases and condition the remainder. Some of us, surely, have learned also that probation and parole, as operated, prevent the law from performing its intended work of punishing. (The word "punishing" is employed flagrantly in the face of all sociological science.) The fact that imprisonment quite regularly fails to reform has also emerged. And the fact that our police methods, more than all the other factors, explain the profits of crime is apparent, though Professor Moley has not extended the scope of his essays to policing.

Another discovery seems to have been made, which is that hasty assaults upon crime, involving the enactment of more or better rules of

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procedure, however necessary to the sum total, constitute, after all, only a skirmish in the whole campaign.

The author's strongest conviction appears to be the need for independent judges who will take from prosecutors some of their broad discretionary powers. Beyond reliance on an awakened civic conscience, he offers no proposal affecting the political *milieu*. But the purpose of the book is not so much to advance reform programs as to present varied experiences and proposals; and this it does with thoroughness within its allotted field.

HERBERT HARLEY.

American Judicature Society.

The Federal Reserve System. Its Origin and Growth. Reflections and Recollections. BY PAUL M. WARBURG. (New York: The Macmillan Company. 1930. Two volumes. Pp. xix, 853; viii, 899.)

Students of political science, as well as those more especially interested in banking problems, are greatly indebted to Mr. Warburg for his analysis of the influence which led to the establishment of the federal reserve system, and also for the convenient collection of the author's own scattered writings brought together in the second volume.

Laws, as Mr. Warburg points out, are not suddenly born, but have been long in incubation. Legislation has its ancestry not only in public propaganda and agitation, but also in private correspondence and exchange of memoranda of which the public as a rule knows little. Mr. Warburg has rendered a distinct service in extending and illuminating the record relating to the initial steps which led to the formulation of the bill as finally enacted. Unfortunately, in several of the specialized studies on the federal reserve system which have appeared during the past few years there have been conflicting statements as to its paternity. Mr. Warburg does not claim to be its author, but the evidence here presented makes it clear not only that his influence was helpful to the National Monetary Commission, of which Senator Aldrich was chairman, but that he played an important part in the framing of the Federal Reserve Act.

But Mr. Warburg does more than set the record clear as to his own personal relationship to the creation of the Act. He comments more particularly upon the defects experienced during his four years of membership on the Federal Reserve Board, and in Chapter XII, "Looking Forward" (written in 1927), he points out the defects which have

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yet to be remedied. Among other recommendations, he advocates a term-settlement of at least a portion of New York's stock exchange operations whereby short loans would be utilized in place of call loans; a further extension of the bill market, even advising that it be made mandatory upon the banks to create such a market; a further exemption of foreign holders of American bankers' acceptances from income taxation; the establishment of an immediate check collection system in place of the present "deferred credit" system; and changes in the government of the Federal Reserve Board. Throughout his treatment he is dispassionate; there is no acrimonious complaint against his critics. Especially interesting in certain of the early memoranda was his effort to protect the new system against any undue influence by New York banks and Wall Street.

In Volume I there is a "Juxtaposition of Texts and Analytical Comparison" of the Federal Reserve Act with the Aldrich Bill (pp. 178-408). The author is generous in his appreciation of Senator Aldrich and recognizes the close relationship between the bill submitted by Aldrich and the final act. "They are surprisingly akin" (Vol. I, p. 408).

Volume II consists of "Addresses and Essays" during the years 1907-1924.

DAVIS R. DEWEY.

Massachusetts Institute of Technology.

L' Organisation Technique de l'État. By P. DUBOIS-RICHARD. (Paris: Librairie du Recueil Sirey. 1930. Pp. ix, 331.)

The author of this book, drawing his inspiration from Frederick W. Taylor and Henri Fayol, sketches in broad outlines the bases on which the technical state ought in his judgment to be erected in France. Embedded in a context of general theory, the thesis of the volume is an appeal to apply the principles of scientific management to the state. In the early part of the book the author takes the position that the immediate ends of the state are determinable by Taylor's methods, but for the most part he remains on the safer ground of considering the relation of means to ends.

The proposals, which are not worked out in detail, are not novel; the reënforcement of the executive power and the function of command, the development of powers of control to enable immediate detection and correction of errors of administrative judgment as well as misapplication of funds, the better coördination of ministers under the leadership

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of the premier, coördination of areas by means of a high degree of centralization, coördination of bureaus, and simplification of methods of work.

In the third part of the book, devoted to recruitment, there are some interesting observations on the contemporary status of the French *fonctionnaire*. Realistically observing that the modern world judges the importance of people by the price of their automobile, the author notes that a second-hand Citroen, suitable to the purse of the public official, the magistrate, and the teacher, is not enough to maintain the high prestige once possessed by the official world. The increasing drain upon the public service made by industry (some figures are given) emphasizes the point. To restore the prestige of the public service, M. Dubois-Richard suggests *inter alia* a discreet but generous distribution of titles, the provision of an automobile for those who have to go about the arrondissements—and a telephone and stenographer! There is also an interesting chapter on the relation of education to the public service in which occurs a sharp attack on current classical training, "apparently intended to transform forty million French citizens into professors, lawyers, and deputies."

Throughout, M. Dubois-Richard insists on the identity of utility, as derived from a "scientific" organization of the state, and justice; but occasionally he pauses to warn his readers that unless a just division of the benefits of better method is secured, justice may linger. How this is to be brought about, and on what basis of sharing, is not worked out; the victims of technological unemployment and of the contemporary over-production crisis would wish a more explicit statement on this problem.

The book presents a program rather than either a factual description of the present technical organization of the state or a specific means of realizing such an organization. Its merit lies in the broad sweep of its pages, its defects perhaps in a failure to deal more definitely with the engineering problems inherent in the program. The usual American efficiency surveys and installations possibly suffer from an inversion of the foregoing.

LEONARD D. WHITE.

University of Chicago.

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Why Europe Votes. By Harold F. Gosnell. (Chicago: The University of Chicago Press. 1930. Pp. xiii, 247.)

This is a careful and thorough study of popular participation in the elections of selected European countries: England, France, Germany, Belgium, and Switzerland. In addition to presenting the statistics which he has so assiduously compiled, Dr. Gosnell interprets his figures in the light of the political experiences of the various countries he has studied. His approach, while thoroughly scholarly, has also been practical, and his book gives evidence of the value of personal investigation in the field. His familiarity with actual political affairs in Europe has enabled him to avoid many of the errors which less fortunate closet philosophers are likely to commit.

In pointing out the various factors which affect voting percentages, Dr. Gosnell does not attempt to evaluate each one of them. Proportional representation, however, he indicates as the system most likely to bring out a large vote. In regard to compulsory voting in Belgium, the author is non-committal because of the other factors involved in the Belgian situation.

As each country is considered, a brief summary of its political parties is presented, and the whole study is amply fortified with charts and tables. A final chapter entitled "Applications to America" sums up the various lessons that this country can learn from the way people vote in Europe. It is not made clear whether the author desires to advocate the changes he enumerates in this chapter, but in any case his points are well taken and are justified by the survey he has made.

The tables in the appendices showing the figures for both national and selected local elections in the countries studied are very useful. Table XII, showing the popular participation in presidential elections in the United States, together with Appendix III, which explains the method of computing the estimated number of eligible voters in the United States, furnishes us with a different and probably a fairer, basis than we have heretofore had for discussing the voting habits of this country. As a result of Dr. Gosnell's researches, we are much richer, not merely in information concerning European voting habits, but also in the more complete interpretation and understanding of European politics.

James K. Pollock.

University of Michigan.

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Civic Training in Switzerland; A Study of Democratic Life. By Robert C. Brooks. (Chicago: The University of Chicago Press. 1930. Pp. xx, 436.)

In more than four hundred large pages of small type the author has packed an amount of information that cannot properly be characterized in a few paragraphs. The book represents wide studies, both of printed materials and of actual conditions in Switzerland, and sets forth the various topics with frequent comparisons with other countries. Having already twelve years behind him a book on the government of Switzerland, Professor Brooks enters this phase of the field as one acquainted with the complexities of the task.

The plan conforms to the series on civic education to which it belongs, and in depicting the conditions, natural and man-made, through which the citizen reaches an understanding of his political duties the first problem is to find the place where his real loyalty belongs, whether to his state or to the confederation. A strong adherence to locality, tempered with the least workable amount of federal spirit, seems to be the common recipe; and this condition affects in some way every phase of civic life—education, economic associations, political parties, and all the rest. To account for this, one recalls that the Swiss have had ages of local independence in three languages, with union only in times of danger, followed by only four score years of modern national government.

Political parties are treated from their constructive or educational side, and for an understanding of this, the many auxiliary associations and economic groups with permanent organization need to be taken into consideration. The combined efforts of all these in the spread of ideas and political uplift make an impressive picture, though it is a model on a miniature scale. The playground is small and holds but four million players.

In the construction of citizenship, the schools, the preparation for civil service, the church in moral uplift, family life, and the stimulus of patriotic societies are given their place, along with many other factors less obtrusive to the notice. Literature, music, time honored ceremonials, patriotic symbols, and historic traditions are called in for their part in this educative process and an estimate of the total result set forth. The author's opinion of Swiss institutions in almost every direction is highly favorable, and with this the reviewer is able to agree. The estimate of the relative value of these various factors in civic edu-

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cation brings up debatable questions which provide good reasons for reading the book carefully. His final rating of Switzerland for standing in political advancement briefly summarizes what he thinks he has proved—a challenge which the argumentative reader would like to see at the beginning.

James Bryce is quoted as giving Switzerland more good qualities and fewer demerits than any other modern democracy, but the author proceeds to measure it further by a scale of his own. Taking nine of the factors of civic life, he demands of each how much it has contributed to the building of the good Swiss citizen. Grade "one" is high excellence, two is good, and three is fair. Grade four and lower are not considered, as there are no failures in these forces. Rated as only "fair" in the mechanism of civic training are the church and the family; the first because it has slowed down in influence in the past half-century, and the family shows no peculiarly marked effect in that direction. "Seconds" in effective training are government service, civil and military, patriotic societies, language, literature, and the press; while first in rank among civic educational forces are political parties, schools, symbolic emblems and commemorations, traditions, and devotion to locality. These categories bristle with questions, and the amplifying pages which lead to such conclusions are both instructive and stimulating.

J. M. VINCENT.

Johns Hopkins University.

Civic Attitudes in American School Textbooks. By BESSIE L. PIERCE. (Chicago: The University of Chicago Press. 1930. Pp. 297.)

This book is one of a series edited by Professor Charles E. Merriam under the general heading of *Studies in the Making of Citizens.* In an effort to discover what impressions and attitudes the children in American schools, particularly the high schools, derive from the way in which facts, prejudices, and conclusions are expressed in the textbooks which they study, Dr. Pierce has analyzed about four hundred textbooks in various fields—history, civics, sociology, economics, geography, reading, music, and foreign languages. Frequent quotations are given, and there are numerous specific references to items which are not quoted verbatim.

Nearly half of the book is taken up with an analysis of history textbooks. The special emphasis in this portion of the work is on the inter-

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national attitudes that the texts, either consciously or unconsciously, develop. It may be somewhat surprising to find certain countries, such as France, so uniformly lauded, and others, such as Spain and Germany, so uniformly condemned as to policies and motives. As to our attitude toward Great Britain, Dr. Pierce concludes that there is no ground for the charges, made more often a few years ago than they are today, that our textbooks are becoming pro-British.

The civics texts, Dr. Pierce finds—just as the history texts—uniformly convey the impression that the policies and ideals of the United States are worthy of high praise. A few quotations from one text in particular indicate that there are cases in which this sort of "patriotism" is affected with a surgary sentimentality. Geography texts seem to be the freest from this sort of thing. Textbooks in music are analyzed with reference to the proportion of songs of national or international character. Foreign language texts in French, Spanish, and Italian are shown to encourage an attitude of admiration for the people whose language is being studied. Perhaps Dr. Pierce does not think that German textbooks are used enough in our schools today to warrant considering them. Certainly the same statement would apply to them if they were considered.

One chapter of the book deals with laws of the states affecting civic instruction and gives in small compass the outstanding provisions of those laws with reference to such matters as the requirement of certain subjects, the use of foreign languages in teaching, and the attempt to establish some sort of censorship over the teachers and their attitude toward governmental policies. Another chapter analyzes some of the outstanding courses of study prepared by state and city school authorities with reference to the civic attitudes which they consciously undertake to develop.

"It has not been the purpose of this study to advocate what the content of textbooks should be," the author says. In view of children's habit of believing almost everything that they see in print, the ideals and attitudes which textbooks encourage must play a tremendously important part in the civic thinking of the American people. In making her analysis of so many of the outstanding texts now in use in our schools—and some that are not so outstanding—Dr. Pierce has rendered a real service.

R. O. HUGHES.

Pittsburgh, Pa., Public Schools.

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The Failure of Federalism in Australia. By A. P. Canaway. (London: Oxford University Press. 1930. Pp. 215.)

After three decades on trial, federalism in Australia awaits the verdict. To facilitate a fair judgment and to apprise readers of Australia's plight, Mr. Canaway—employing at once tools of the historian, philosopher, political scientist, and logician—presents a clearly reasoned though formalistic case, which batters federalism and eulogizes the superiority of unitary government for Australia. The ultimate motive behind this essay may be political; but the meticulous manner of its presentation lifts it from the class of any but the highest type of propaganda.

The ignobility of Australia's experiment with federalism bares itself glaringly in the present state of affairs. Aside from a current financial dilemma—which the author treats only by implication—the cumulative effects of federalism inhere in such matters as non-uniform railroad gauges (p. 10), ill-advised urbanization (p. 28), a high protective tariff favoring secondary, at the expense of primary, industries (p. 29), the practice of levying taxes on the capital value of unimproved land (p. 20), an inadequate system of industrial arbitration (p. 32), mismanaged public finance, duplication and conflict flowing from the existence of two independent systems of governmental authority (p. 42), and inarticulation of state land policies with Commonwealth immigration projects. Such chaos may be alleviated by a veritable panacea—unitary government. The excellence of this polity adequately counters flimsy stock pleas defending federalism in Australia (pp. 178-210).

A unitary polity bridges the gaps of federalism; frailties of the latter become the fort of the former. Federalism is not mechanically efficient, because it neither regulates all legislative and administrative actions by reference to demands in the nation's situation nor coördinates all such actions into a coherent whole. Obversely, however, under unitary government institutional machinery never lacks constitutional competence to act (p. 49). There can be no potential faultiness in the division of legislative authority between component entities in this system (p. 50). Of significance also is the objectivity of governmental activity (p. 60), bestowing a consequent certainty upon governors (pp. 54-55) who act through channels of coördinated facilities for executing the nation's will.

Viewed psychologically, the ill-effect of federalism on the mental pro-

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cesses of the individual obviates the possibility of good government. Lacking a single set of institutional machinery, the objective imposed upon a nation by the law of its being does not stand out with clearness. "The interaction between federal and state governmental activities is indeterminate and incapable of being gauged. . . . No mental effort on the part of any one . . . will enable him to duly establish the causal connection between any given federal or state governmental action and its ultimate effects as reflected in the state of the nation" (p. 74). Hence public opinion cannot be freely or accurately formed (p. 91), rendering incompatible the existence together of federalism and responsible government (pp. 95-137).

Canaway's work may be commended for its formalistic development of general, yet finely drawn, considerations bearing on the relative value of unitary and federal government, not only for Australia but for any other country. The author does not searchingly analyze existing federal government in Australia; his syllogistic reasoning does not lend itself to such an exposition.

It seems pertinent to suggest that—assuming the possibility of effective federal government under certain conditions—an investigation of the precise relationship between Australian states and the Commonwealth in all governmental activities, with a view to ascertaining and describing principles governing this association, might conceivably contribute to a more complete understanding of the proper relationship between the component parts and the whole of federal polities. In defense of Australian federalism, it would seem that Canaway's condemnation makes prosecution of this thesis imperative.

KENNETH O. WARNER.

Washington, D.C.

Responsible Government in Nova Scotia; A Study of the Constitutional Beginnings of the British Commonwealth. BY W. ROSS LIVINGSTON. (Iowa City: Iowa University Press. 1930. Pp. 192.)

At this stage of Dominion autonomy, and also at a time when India is asking for responsible government and Dominion status, it would seem worth while to examine the early attempts at reconciling the principles of imperial control with self-government by more or less autonomous parts. For pure theory, no better example can be found than the development in Nova Scotia, whose pride was to make itself "a normal school for the rest of the colonies."

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As Professor Livingston points out, his field is practicaly virgin, and he has relied almost exclusively on original and manuscript sources. Herein lies the main contribution of his work, for the copious and judicious extracts make the study both authoritative and interesting. But in dealing with a strong character, such as Joseph Howe, the author easily falls into the temptation of making a partisan treatment, which appears especially attractive since the subsequent development of the problem justified the stand of his hero. Similarly, the narrow focus of attention almost exclusively to one province presents the struggle out of proportion to the general problem affecting all the colonies. Where Professor Livingston does connect it with the issues being fought in the Canadas, the reader is conscious of a hiatus in which the author appears not to have considered the parts in relation to the whole. For example, the question of a Civil List, for which the Nova Scotians were still contending in 1839, had already been settled as early as 1830 in Upper Canada by the passage of the "Everlasting Salary Bill." Again, in 1842, in writing to Stanley about Canadian affairs, Bagot admitted: "Whether the doctrine of responsible government is openly acknowledged, or is only tacitly acquiesced in, it virtually exists." It is unnecessary to quote further to show the danger of treating such a general problem even in relative isolation. Professor Livingston has, however, undoubtedly made a distinct contribution. His monograph will be welcomed for having focused attention on this neglected field of the earliest development of the practice of responsible government in the British Commonwealth of Nations.

LIONEL H. LAING.

Victoria, British Columbia.

Survey of American Foreign Relations, 1930. By CHARLES P. HOWLAND. (New Haven: Yale University Press. 1930. Pp. xvii, 541.)

The third volume of this excellent annual *Survey of American Foreign Relations* adheres to the same general plan of topical treatment of selected subjects followed in the preceding volumes. In each of the three Surveys that have appeared, a regional emphasis has been given. In the first volume, the emphasis in general was on American policy in relation to Europe; in the second, a background for an understanding of the relations of the United States with the republics of Central America and the Caribbean, as well as a discussion of policy, was fea-

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tured; and in the present volume about three-fifths of the space is allotted in the same way to the Pacific and Far East.

Each volume, however, does not stand apart from the others in splendid isolation. Whenever and wherever new developments warrant, the threads dropped in a preceding volume are picked up. For example, the Survey of 1928 gave an account of financial relations of the government of the United States from the World War through the year 1927. The present Survey contains more recent developments, notably a well-rounded discussion of the Young Plan.

Post-war efforts to realize a progressive limitation of armaments, dealt with at length in the 1928 Survey, are now given further attention. The discussions of the last few years have revealed that the general problem of armament limitation is made more difficult of solution by the fact that statesmen think of armaments not only as the means of guaranteeing the security of their respective nations, but also as the means of securing their prestige and exalting their authority. Might, like money, talks. "Armaments give station to nations in the international community. The larger the armaments, the higher the station. This prestige is an immaterial substance, highly valued, not capable of adequate statement . . ." (p. 396).

The Pact of Paris, a treatment of the origin and nature of which is to be found in the 1929 Survey, is further considered in the light of its "first test"—the Russo-Chinese dispute over the Chinese Eastern Railway. Secretary Stimson's activity in enlisting the coöperation of the other signatories of the Pact in an effort to prevent war is approved. "If this is to be the policy of the United States . . . then there is new support for the view that the Pact of Paris, though not in itself a complete instrument of international order, is one of the texts on which such an order may be built" (p. 402). One wonders, nevertheless, how far such improvisation is likely to be effective. Measured by a completely *laissez-faire,* do-nothing policy, the Stimson initiative represents a praiseworthy resolution, at least, to remind the drunkard that he has signed the pledge, and to invoke the sanction of public opinion. Measured by the technique that has been developed by the League of Nations, it represents a somewhat tardy, haphazard, and ineffective method of dealing with acute situations covered by the Pact.

FRANK M. RUSSELL.

University of California.

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The Spirit of the Chinese Revolution. By Arthur N. Holcombe. (New York: Alfred A. Knopf. 1930. Pp. vi, 185.)

One of the most thoughtful and penetrating analyses of the recent political history of China may be found in Professor Holcombe's *The Chinese Revolution.*[3] The volume now before us, *The Spirit of the Chinese Revolution,* is described as "an effort to interpret for a wider audience" the results of the investigations presented in the former treatise. It consists, in fact, of a series of Lowell Institute lectures delivered in 1930. The occasion called for a lighter touch, a less well-knit development, and an elimination of all citations and documentary appendices. For the general reader, *The Spirit of the Chinese Revolution* may be commended; for the informed reader, the larger work is much more important.

As might be expected from the title, the treatment is topical rather than chronological. The six chapters, or lectures, are developed around a personality and the spirit he represents. Thus we have "Sun Yat-sen and the Spirit of Democracy," "Borodin and the Spirit of Bolshevism," "Feng Yu-hsiang and the Spirit of Christianity," "Chiang Kai-shek and the Spirit of Militarism," "T. V. Soong and the Spirit of Capitalism," and "C. T. Wang and the Spirit of Science." In some cases, notably that of Dr. C. T. Wang, the connection would seem to be exaggerated, while other leaders and spirits might well have been included to round out the picture of "a whole set of revolutions going on at the same time." Such a treatment also runs the risk of repetition and overlapping chronology. But the whole effect is good, and many a reader who has been unable to make head or tail out of the news reports from China will here find a clear interpretation.

It is hard to resist the temptation to quote extensively from the text. Perhaps this estimate by a professor of government of a new experiment in government is as suggestive as any: "The ultimate fate of Dr. Sun's plans for the political reconstruction of China can be left to the future to reveal. It is sufficient for the moment to understand the general effect of Dr. Sun's plans upon the present prospects of the revolutionary movement, and especially upon the stability of the political system which is being established at Nanking. For this purpose it is enough to know that his plans, though incomplete and in part badly formulated, contain a great deal that is fundamentally sound and

[3] For a review of *The Chinese Revolution,* see this *Review,* May, 1930, pp. 505-506.

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of excellent repute, and that his general system of political thought compares favorably with that of other great revolutionary leaders in modern times. Indeed it may be doubted whether any great revolutionary movement has been provided with a more serviceable political philosophy. The possession of such a political philosophy is a source of enduring strength to the Chinese revolutionary movement and to the political system which that movement has created. It gives the dictatorship of the Nationalist party, the Kuomintang, a better prospect of stability than that of any other form of dictatorship that has been suggested for China."

PAYSON J. TREAT.

Stanford University.

Africa and Some World Problems. By GENERAL J. C. SMUTS. (New York: Oxford University Press. 1930. Pp. 184.)

The half-dozen addresses contained in this volume were delivered at Oxford and other universities in Great Britain during the late autumn of 1929. On the three topics which are universally recognized as world problems, General Smuts was, as usual, fresh and stimulating. As part-author of the League of Nations, he was hopeful of its future and of that of the world peace which it seeks to safeguard. Nor was he despairing of democracy, provided expert non-political committees, of which the Dawes Commission is an example, be interposed between overdriven legislatures and ill-informed electorates.

The three principal addresses, however, were devoted to the world problem of Africa. At Oxford, General Smuts first dealt with the part that he desired Europeans to play in East and Central Africa, where great changes are clearly pending; in the second, he dealt with the other side of the story, i.e., native policy. At Edinburgh and Glasgow, a little later, he used the name of Livingstone as a peg on which to hang a eulogistic estimate of the work of Christian missions in the Dark Continent. There is much that is excellent in all three addresses; but, read as a whole, they display grave discrepancies. In his first address, General Smuts reflected the views of the average South African and, for the matter of that, of the non-official East African, when he advocated a vigorous policy of immigration, further political powers to the non-officials, and employment of blacks by whites as the best means of furthering civilization in what he hopes soon to see a great Dominion. His second address did not fit in with

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the first, for it was essentially a plea for the maintenance of the tribal system. True, he tried to bridge the gulf by suggesting that, provided the men were not absent from the *kraals* in too great numbers nor for too long, their families could maintain their accustomed life. The facts of experience tell heavily against this comforting suggestion, especially in the Union of South Africa, which he somewhat rashly adduced as an example of the good results that may be expected to flow from the methods he advocated in his first lecture. In his Scottish lectures, his praise of the missionaries sorts ill with his earlier criticisms of them (and of officials) as civilizing agencies as compared with decent European employers.

In short, General Smuts' schemes for a great East and Central African Dominion rest upon highly debatable assumptions. They presuppose a vast and healthy plateau stretching from Rhodesia to the sources of the Nile. No such plateau exists, nor is it yet proved that the patches of high ground which the much-criticized British government is apparently ready to regard as European areas are really healthy in the sense that Europeans, high up under the strong rays of the sun, can rear families successfully generation by generation. The civilized world, on both sides of the Atlantic, must know much more of the facts and conditions of life of all concerned before any sweeping policy can be undertaken safely in those parts. The sooner a systematic survey is set on foot the better.

ERIC A. WALKER.

University of Cape Town.

The People and Politics of Latin America. By MARY WILHELMINE WILLIAMS. (New York: Ginn and Company. 1930. Pp. vii, 845.)

It is only during the last few years that interest in Latin America has been sufficient to warrant the publication of texts designed for the use of college students interested in this field. Perhaps this dearth of suitable material may have been one of the principal reasons for the general lack of interest manifested by the institutions of higher learning in the United States in the history and political affairs of the Latin American states. If this is the case, the present text by Dr. Williams will go far to remedy the situation. It is difficult to conceive how the complicated and variegated history of the twenty Latin American republics could be set down in a more satisfactory and presentable fashion.

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In organizing her material, Dr. Williams has employed the topical method as far as possible, and her chapters devoted to political and economic administration in the Indies, the Church, education, and fine arts are models of their kind. Although almost monographic in treatment, the author rarely presents her facts without correlating and interpreting them in such a way as to keep the interest constantly aroused. The treatment by topics also lends itself to utilizing the book for more than one quarter's or semester's work.

The author has not only been painstaking in presenting the facts accurately but judicious in her emphasis. The excellent bibliography indicates that little or no secondary material in the entire field has been overlooked, and the comments show that the author has examined a large part of it critically.

The volume contains an admirable collection of maps, and the printing and format are attractive. The author is to be congratulated on presenting so excellent a text in this increasingly important field.

GRAHAM H. STUART.

Stanford University.

El Panamericanismo y La Opinion Europea. BY ORESTES FARRARA. (Paris: Editorial "Le Livre Libre." 1930. Pp. x, 302.)

European alliances the author pictures as combinations which have been for defense of national interests against other powers. Hence, at least in part, arises the inability of European writers to appreciate the purpose and temper of Pan-Americanism, their deprecatory attitude toward it, and their inability to appreciate its effort to establish coöperation among the American states.

The constructive work of each of the Pan-American conferences and its reception by European publicists is reviewed. About half of the book is devoted to analysis of the developments of the conference at Havana and the bearing of the discussions there upon intervention and financial and economic imperialism.

Both citizens of the United States and of Latin American nations will find of special value the historical discussion of intervention which is stated to be approved under exceptional conditions by European and American writers and explicitly denied by no recognized authority. The analysis of the issues at Havana involving choice between the declarations by the Special Committee which met at Rio by resolution of the Third Pan-American Conference and those of the American

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Institute of International Law are outlined in detail, and the constructive character of the latter is clearly set out.

Spread of international trade is discussed as an influence binding together the American states on the basis of mutual advantage and interest. The commercial policy of the United States has been one which has created for Latin American exports generally—those of the author's own country being the most outstanding exception—a great market to which entry is free or on payment of exceptionally low tariff rates. Expansion of investments also, though it has greatly increased American holdings in recent years, is a development to mutual advantage, following normal lines and still involving in Latin America holdings by citizens of European countries to greater totals than by those of the United States. Contrary to popular belief, American capital has latterly shown a tendency to seek investment southward, not in the Caribbean region where imperialistic designs are alleged to exist, but in the farther republics where it is accepted that they do not.

This volume merits attention by all students of the foreign relations of the United States, and particularly by those who regard the developments among American states as lacking in mutual advantage.

CHESTER LLOYD JONES.

University of Wisconsin.

The International Community and the Right of War. By LUIGI STURZO. (New York: Richard Smith Inc. 1930. Pp. 293.)

It will be difficult for the reader to resist the appeal of this powerful analysis and exposition of the traditional theory of the "right of war." Although clothed at times in somewhat abstract terms, after the manner of Continental thinking, the argument presses forward from the first chapter to the last and ends in a note of realism which convinces us that, however high the ideals of the writer may be, he is at all times aware of the practical aspects of his problem. For the author is no mere academician. Cleric and statesman, mayor of the small town in which he was university professor, social organizer and leader of a liberal political party, exile from his native country because of his opposition to the ruling dictatorship, Don Luigi Sturzo knows the Latin world and its reactions to the problems of international relations. Being also a student of history, he is able to develop his thesis in the light of the legal and moral inheritance of his readers. Hence his

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approach to the problem of the elimination of war will appeal to the practical Anglo-Saxon mind as well as to the more theoretical mind of his fellow-countrymen.

The thesis is a simple one, although its basis is at once historical, sociological, moral, and legal. Mankind, history tells us, is in a state of change, proceeding from lower forms of organization to higher. The two institutions of family and state, around which civilization has been built up in the past, must now be supplemented by a third institution, the international community, possessing an organization and a personality of its own and expressing the interdependence of states and the new "principle of association" which necessarily follows from the mutual relations of states. Civilization is organization, and the chief feature of that organization is the control and direction of the use of force. War, once justifiable in the absence of alternative means of obtaining justice, must now yield its claim in the presence of the new machinery created for the settlement of disputes. In the meantime there is the problem of persuading the nations that the ideal of the elimination of war is a feasible one and that the new machinery, defective as it may be at present, can be developed into more adequate means for accomplishing its purpose.

Throughout the volume runs a strong note of liberalism, a belief in the individual citizen and his ability to control his future, a belief in the responsibility of the individual state to the larger community of an organized world. Already there are signs of the greater international solidarity that is to come. Once the people have caught the idea of the possibility of the elimination of war, they will not be satisfied to let the self-sufficient sovereign state continue to assert the "right to make war."

C. G. Fenwick.

Bryn Mawr College.

The Mixed Courts of Egypt. By Jasper Yeates Brinton. (New Haven: Yale University Press. 1930. Pp. xxvii, 416.)

Judge Brinton, for many years a justice of the Court of Appeals of the Mixed Courts of Egypt, has presented us with a scholarly account of the origin, development, and mode of functioning of these courts and an appreciation of their value in the governance of Egypt generally. Notwithstanding the medley of races and religions with which the courts have to deal, and the difficult political and geographic position which Egypt occupies, the tribunals have developed a smoothly

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working judicial system which for fifty years and more has functioned to the satisfaction of natives and foreigners alike.

The author describes the establishment of the system, the method of selecting the personnel of the courts, the nature of their jurisdiction, and the substantive law and procedure which controls their functioning. He endeavors to show how much of the law has been codified and how much has been evolved through judicial decision from "the principles of natural law and equity." The book is not a treatise on Egyptian law, but it indicates the sources of that law and emphasizes its independence of the systems from which in part it has been derived. Stress is laid also upon the fact that the system antedates the British occupation and that, since it enjoys international protection, it is outside the sphere of influence of the occupying power. Lord Cromer was not favorable to the Mixed Courts system, but the chief danger does not lie in British administrative circles. The author does not seem to fear the rising tide of nationalism in its reaction upon the courts, but in this respect his opinion seems, to the reviewer at least, to be somewhat over-sanguine.

ARTHUR K. KUHN.

New York City.

The Giant of the Western World: America and Europe in a North-Atlantic Civilization. By FRANCIS MILLER AND HELEN HILL. (New York: William Morrow and Company. Pp. x, 308.)

America is being internationalized and Europe is being Americanized. "A common system of production and merchandising is coming into existence around the shores of the North Atlantic. This system is so universal and so revolutionary in its implication for society that no aspect of life can escape its influence." We are confronted by the beginnings of a new civilization. Such is the theme of this book, which describes, in the first half, the American penetration of Europe and, in the second half, the consequences to European life, political, economic, and social. It is a broad canvas and, for the brush of an amateur, might readily lend itself to extravagant effects and violent splashes of color. Actually one discovers in the treatment a real artistic sensibility, a fine perspective, and an appreciation of half-lights and shadows. The workmanship ranks high when set beside the typical crudity of amateurish journalistic compositions in the same field.

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It is the American impact upon Europe, we are told, that is giving shape to the new North-Atlantic unity. If the American continent has been occupied, "the urge that drove man to its occupation and development cannot be expected to disappear simply because geographical limits have been reached." As land-hunger impelled the pioneer, so market-hunger impels the commercial agent. "The maintenance of our standard of living depends upon an expanding market, and the limits of our continental market have in certain instances been reached. When the market's saturation point arrives, the only alternative to going under is to go abroad." America has gone to Europe; and the authors discuss American relations with Europe in all their chief aspects—Europe as a market, for example; Europe as an investment; Europe as an entanglement.

Rôles have been reversed. A century ago Europe menaced America; now she is concerned about her own security. She fears approaching economic subjugation by large-scale rationalized industry from overseas and, afterwards, social subjugation which will involve the values and the way of living to which intellectual Europeans are most attached. So she arms herself by adopting American methods. She entertains plans for a United States of Europe and a Continental market of her own. But through the dust of the conflict the outlines of a new civilization can be discerned. Its chief characteristics are explored in the concluding chapters.

EDWARD MCCHESNEY SAIT.

Pomona College.

Chicago; An Experiment in Social Science Research. Edited by T. V. SMITH and LEONARD D. WHITE. (Chicago: The University of Chicago Press. 1929. Pp. xi, 283.)

The New Social Science. Edited by LEONARD D. WHITE. (Chicago: The University of Chicago Press. 1930. Pp. ix, 132.)

As the brilliant and audacious young president of the University of Chicago said in an address at the dinner celebrating the formal opening of the new social science research building at that institution, in answer to the self-proposed question, "What is the matter with Chicago?," "Why, it is simply an experiment in social science research!" And so it has been regarded for many years by the research-minded of the social science faculties at the University of Chicago. In more recent years, this interest has converged in the Local Com-

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munity Research Committee, made up of representatives from the departments of economics, sociology, political science, history, philosophy, and the Graduate School of Social Service Administration. *Chicago; An Experiment in Social Science Research* is a symposium describing the work sponsored by the Committee during the past five years. This assessment of the experiment of the University of Chicago in the intensive study of many phases of urban life in Chicago and its region gives a valuable picture of what is happening in this dynamic center of social science research, and furnishes many leads as to the new developments in research technique which are evolving there to meet the several types of problems under consideration.

"It is quite in accord with her own tradition that the University of Chicago should become the seat of the first building dedicated wholly to research in the social sciences," says Wesley C. Mitchell in one of the chapters in *The New Social Science,* a collection of lectures delivered on the occasion of the dedication of the Social Science Research Building at that institution on December 16 and 17, 1929. No one small volume can adequately analyze the reconstructive processes taking place in the social sciences today throughout the world; but, from Herrick's searching analysis as to whether the social sciences can really justify themselves in being called sciences, through Ruml's original and stimulating discussion of the trends in social science, to Moulton's and Beveridge's appraisals of coöperation and international coöperation in research, this symposium is an enlightening contribution to such an undertaking.

WILSON GEE.

University of Virginia.

Statistics in Social Studies. Edited by STUART A. RICE. (Philadelphia: University of Pennsylvania Press. 1930. Pp. 222.)

In the foreword to this collection of articles by twelve different authors the editor states that the papers were prepared to fulfill the need for an appraisal of the extent to which statistical methods have already been developed, utilized, or foreshadowed in a variety of social and sociological studies. The contributors were urged to direct their discussions to questions related to statistical method, rather than to the content or detailed results of the studies considered. If each of the articles measured up to these objectives, the book would have been a solid contribution; but unfortunately this is not the case. About

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half of the contributors failed to give a broad survey of the existing statistical material and the main problems in the fields covered. The three chapters on prohibition have no logical place in the general scheme of the book. They are interesting chiefly as examples of how the statistical techniques of graphical and tabular presentation can be misused by persons who are concerned with proving a case.

The book covers a wide field, including the discussion of statistical studies of such varied subjects as race relations, the family, medical care, dependency, the administration of justice, social attitudes, and personality. The application of many different statistical devices is touched upon. The main problem that seems to stand out in most of the articles is that of the selection of units of measurement in social studies. The measurement of trends, the formation of index numbers of social well-being, the interpretation of correlation coëfficients, and the applications of psychophysics to the study of public opinion are among the other statistical problems mentioned. The comments of Ralph G. Hurlin, Donald Young, C. E. Gehlke, and Stuart A. Rice on the limitations of existing statistical studies in certain fields are especially illuminating. Of particular interest to political scientists is L. C. Marshall's discussion of the beginnings of judicial statistics. It is regrettable that Professor Marshall did not discuss the Yale University set-up as well as the one worked out at Johns Hopkins University. Clifford Kirkpatrick gives an excellent discussion of the relative merits of the case-study method and the statistical method in the field of personality problems.

While some of the articles are real contributions, it is unfortunate that the editor did not exercise closer supervision over the entire work and hold each author to the main objectives stated in the foreword.

HAROLD F. GOSNELL.

University of Chicago.

Roosevelt; The Story of a Friendship, 1880-1919. By OWEN WISTER. (New York: The Macmillan Company. 1930. Pp. 372.)

Books about Roosevelt seem likely in the course of a hundred years to be as numerous as books about Washington. Owen Wister's *Roosevelt; The Story of a Friendship* goes into the numerous category of appreciations—sometimes depreciations—of Roosevelt, by people who were admitted to his friendship and who had opportunities of personal observation.

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The title and the text of the book place it among works simultaneously descriptive of two characters—the subject and the writer. Wister's college life at Harvard overlapped that of Roosevelt, though it does not appear that they were intimate then. The bond between them seems to have been Wister's *The Virginian,* which Roosevelt read, liked, praised, and accepted as the beginning of a new type of Western literature.

From that time the friendship was chiefly literary, and particularly Western. The letters printed in the volume for the period of the Spanish War and Roosevelt's governorship deal chiefly with the social and family life of the great New Yorker; most of the extracts are from Roosevelt's criticisms on books and personalities. The first half of the book is an interesting and doubtless authentic account of the contacts of the author with a circle of important men—great legal minds, artists, authors, soldiers, some statesmen, and occasionally Roosevelt. A long letter of Roosevelt (at p. 206) illustrates his attitude toward corrupt politicians, featuring a heartfelt detestation of crooked politics anywhere. Inasmuch as Wister at that time knew Roosevelt well and knew some of the crooked ones directly or by reputation, he makes a contribution to our knowledge of Roosevelt's political gospel during his first term as president. Another interesting touch is a discussion of the beginnings of mistrust between Roosevelt and Taft up to Roosevelt's departure for Africa in 1910.

Various reported conversations and discussions of men make clearer Roosevelt's theory and practice of government; but there are no revelations of heights or depths heretofore unknown. Roosevelt expressed the same sentiments to other people and at greater length—sentiments which were the political gospel of Theodore Roosevelt. Among these were his detestation of falsehood, abomination of crooked political practices, and intense personal dislike of the so-called practical politician.

Most of the latter part of the volume is devoted to the presidential campaign of 1912. Wister was not the first to discover the rift between Taft and Roosevelt, the early willingness of Roosevelt to accept a third term, and the widening chasm between him and most of his former participants in the administration. The book makes very clear Owen Wister's belief that the drive for a third term was a terrible misfortune, although when the crisis came he organized a Roosevelt meeting in Philadelphia. Wister was not of those children who went

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through the roaring furnace of that campaign. He makes clear that he thought the candidacy was from the beginning a mistake. No evidence in the book contradicts hitherto published evidences of Roosevelt's frame of mind and belief in his own cause. Nor, with a few exceptions, did he pour forth his soul to his later biographer. Wister was never a thick and thin Roosevelt man.

It is a fair criticism of the book to observe that this story of a friendship with a very great man gives equal attention to the two friends. The biographer and the subject are inextricable. Roosevelt's personal friendship for Wister, extending over a course of years, is undoubted. But neither in this volume nor elsewhere is there evidence that the latest biographer was a trusted political counselor; nor that his wisdom effected any deviation in the political mind of Theodore Roosevelt. Wister is one of the many friends and several biographers of Roosevelt, both in his time of power and in his later life; but his picture of Roosevelt, when all the strokes are assembled, is not the Roosevelt who "stood at Armageddon and battled for the Lord."

ALBERT BUSHNELL HART.

Cambridge, Massachusetts.

BRIEFER NOTICES[4]

AMERICAN GOVERNMENT AND CONSTITUTIONAL LAW

The latest volume in the Knopf series of Political Science Classics edited by Professor Lindsay Rogers is *Selected Political Essays of James Wilson* (pp. 356), edited, with an introductory essay, by Dr. Randolph G. Adams. It includes most of the more important pamphlets and speeches of Wilson, together with selections from his law lectures. It does not, however, include any of the speeches delivered in the Federal Convention of 1787, a regrettable omission. Most of the material is reprinted from the Bird Wilson edition of 1804, and is also to be found in the Andrews edition of 1896. It will be very useful to teachers of American political theory and constitutional history, but it is not edited for scholarly purposes. There is a good bibliography, but the introductory essay is not entirely satisfactory. Another reprint of interest in the same field is Professor Charles F. Mullett's *Some Political Writings of James Otis* (University of Missouri Studies,

[4] In the preparation of the Briefer Notices, the editor in charge of book reviews wishes to acknowledge the assistance of Dr. E. P. Herring.

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Vol. IV, nos. 3 and 4. None of Otis' essays had been reprinted since his death, and most of them had become very rare; in fact, some of them were not obtainable even in the larger libraries. This is particularly true of the *Vindication of the House of Representatives* (1762), which, because of its early date, is of unusual interest in the development of the literature of protest written in the years preceding the outbreak of the Revolution. The reprinting of this essay, of the well known *Rights of the British Colonies* (1764), and of the three pamphlets published in 1765, makes available all of Otis' longer and more formal writings.—B. F. W.

A biography of more than average interest is *Nelson W. Aldrich,* written by Nathaniel W. Stephenson and published by Charles Scribner's Sons (pp. x, 496). The author attempts to examine, not merely the life of a man, but his times as well and the play of forces within which he struggled. Accordingly, the book is an intimate account of the politics of the period and of the party leaders with whom Aldrich was associated. It is preëminently an account of the federal government in action and of its control through partisan alignments. Another biography in somewhat the same vein is that entitled *Thomas B. Reed, Parliamentarian* (pp. xii, 423), written by William A. Robinson and published by Dodd, Mead and Company. The book gives a close account of the changes in congressional procedure and the part played by Reed in the leadership of the House, combining with this a sympathetic and intimate portrayal of Reed's personality. The author defends the "czardom" of the former speaker. Herbert S. Duffy presents a pleasant description of the life and character of the former Chief Justice in a biography entitled *William Howard Taft* (Minton, Balch and Co., pp. 345). The political activities and the administrative tasks performed by Taft are discussed interestingly and adequately, but his judicial work receives very summary treatment. Scarcely a dozen pages are devoted to his justiceship on the Supreme Court. Even though one agrees with the author that "a separate volume would be necessary if one were adequately to record and analyze his decisions," still no biographer can aspire to a full length delineation of Taft without a careful consideration and some evaluation of his work on the bench of the Supreme Court.—E. P. H.

In his *The Peerless Leader: William Jennings Bryan* (Farrar and Rinehart, pp. xvi, 446), the late Paxton Hibben has left behind a

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memorial to his own literary skill and ability to portray personalities and movements. Much attention is given to Bryan's early life, religious training, and education, in order to show their influence on his later ideas and actions. Emphasis is placed also on the emotionalism of Americans between the middle of the nineteenth century and the third decade of the twentieth century, with Bryan as the symbol of that tendency. In fact, this may be regarded as the central theme and the original contribution of the volume. There is little that is new in the book, but the method of presentation is novel and of the type which holds the reader's interest to the end. The biography is impartial, although the detailed analysis of Bryan's every thought and movement tends somewhat to emphasize the human frailties of the man. Charles A. Beard has written a preface which is not only a memorial to the author but an interesting essay on American biographical writing.

The Harvard University Press has reprinted *The Laws and Liberties of Massachusetts* (pp. ix, 59), from the copy of the 1648 edition which is now in the possession of the Henry E. Huntington Library. There is an introduction by Max Farrand. This reprint is of great convenience to students of government, history, and law, because it makes accessible to them a document which "was the first attempt at a comprehensive reduction into one form of a body of law of an English-speaking country." *The Laws and Liberties* of 1648 also stands as "the basis of all Massachusetts legislation" and influenced "as well the legislation of other colonies, notably Connecticut and New Haven." It also was a significant step in the establishment of responsible government. The reprinting reproduces the original in type-facsimile. There are also several photostatic reproductions of the original text.

The Colver lectures at Brown University delivered in 1923 by Dean Roscoe Pound, of the Law School of Harvard University, were assembled six years afterwards in a volume entitled *Criminal Justice in America* (Holt, pp. 226) and given timeliness, not only by keen present-day interest in the subject with which they deal, but by the author's membership in President Hoover's Commission on Law Observance and Enforcement. The lectures appear substantially as written out from the notes used in 1923, and the caution is sounded that they are not to be taken as passing a present judgment on matters which the author is "now required to look into more deeply." The first lecture sets forth

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the general problem of criminal justice; the second deals with the difficulties involved; the third traces our inheritance from England; the fourth sketches the evolution of criminal justice in America in the nineteenth century; and the fifth discusses criminal justice today. No keener analysis of determining social and economic backgrounds, institutional machinery, current practices and procedures, and fundamental conditions of improvement in this crucial domain of our national life has been written.

The University of Pennsylvania Press has published a little volume (pp. 148) by George Wharton Pepper entitled *In the Senate.* It is a pleasant account of the political experiences of this erstwhile senator from Pennsylvania. Mr. Pepper's service in the Senate was of brief duration, but his story is perhaps all the fresher and sharper for this reason. He gives the impressions of one taken from private life and confronted suddenly with the problems of public office. The book is informal and reminiscent, and makes no pretense of being anything other than the personal record of a brief episode.—E .P. H.

In *American Government Today* (Macmillan Co., pp. 653), Professor William Bennett Munro presents a text intended for use in advanced classes in the secondary schools. The author considers the background and basis of government and then undertakes a discussion of the organization and administration of government, both state and federal, in the United States. He concludes with a section on civic obligations. The material is presented with Professor Munro's usual lucidity, and understanding is further aided by lists of suggestive questions and selected references after each chapter.

The following books on American history which have appeared during the last year have some interest for students of American federal and state government: *The War of Independence; American Phase,* by the late Professor Claude H. Van Tyne (Houghton Mifflin Co., pp. 518); *New York in the American Revolution,* by Wilbur C. Abbott (Scribner's, pp. xiii, 302); and *Ethan Allen,* by John Pell (Houghton Mifflin Co., pp. xii, 331). The portions of Professor Van Tyne's book most useful to students of government are the chapters on "Divided Public Opinion in England," "The Clash of Pamphleteers and Statesmen" over the relations between England and the American colonies,

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and "The Declaration of Independence." The final chapter in Professor Abbott's book gives an interesting picture of New York City in the last quarter of the eighteenth century. The latter part of Pell's *Ethan Allen* throws light on the early government of Vermont and the stormy relations of this state with Congress and with the neighboring states of New Hampshire and New York.

STATE AND LOCAL GOVERNMENT

The Seventeenth-Century Sheriff; A Comparative Study of the Sheriff in England and the Chesapeake Colonies, by C. H. Karraker (University of North Carolina Press, pp. xv, 219), is a worth-while contribution to American local constitutional history. The study shows the similarities in the office of the sheriff in England and in Maryland and Virginia to have been more numerous than the differences. "In both countries the office was occupied by representatives from closely resembling social and economic groups, and appointment was made in much the same manner. The colonial office was more sought after because it always assured its occupant a substantial income. His fees were good, even when not supplemented with those of the coroner, clerk, or surveyor, whose offices he sometimes added to his own. He was, besides, free of the great official expenses incurred by the English sheriff while accounting to the Exchequer and entertaining at the assizes. With a few exceptions, the general nature of their duties was alike. The colonial sheriff published proclamations, supervised and returned elections, executed the administrative and judicial business of the courts, kept the peace, and collected the royal and proprietary revenues, performing these ancient duties of the English office in most respects with close conformity to English law and custom. . . On the other hand, he had, in the colonies, a far greater importance as a financial officer than in England, by reason of the fact that in addition to the royal and proprietary revenues he also collected the poll taxes." The most important divergences in the colonies show the "powerful influence exerted by the newness of the environment upon the remolding of this ancient institution," and may be grouped under six heads: "the increase in financial powers; the lack of judicial functions; the temporary loss of election duties; the more purely local than royal and provincial character of the office; the more democratic character of the office; and its more important place in colonial county government."

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Two recent studies of state and local indebtedness, from somewhat different points of view, are *Public Borrowing*, by Paul Studensky (National Municipal League Monograph Series, pp. vii, 137), and Ward L. Bishop's *An Economic Analysis of the Constitutional Restrictions upon Municipal Indebtedness in Illinois* (University of Illinois Studies in the Social Sciences, Vol. XVI, No. 1, pp. 113). Mr. Studensky discusses briefly the development and scope of public borrowing, the trend of expenditures for permanent improvements, legal restrictions on borrowing, a policy of *all* loans vs. *no* loans, the term of loans, and a plan of borrowing combined with taxation. He is of the opinion that it is "possible to combine borrowing with taxation in the financing of permanent improvements, to take care of both the normal and the abnormal expenditures, while avoiding the exhaustion of the borrowing and taxing powers and leaving the way open for the financing of future improvements." Essential features of such a policy are: (1) the planning of expenditures for permanent improvements as a whole instead of by individual items, (2) the preparation of a long-term improvement plan covering a five or ten year period, and (3) the creation of a central controlling authority over expenditures and over the means of financing them. The distinctive feature of Mr. Studensky's proposed plan is "a new method of determining the proportions in which taxation and borrowing should take care of expenditures for permanent improvements." Mr. Bishop concludes that although constitutional limitations on municipal debts in Illinois were successful in correcting certain abuses at the time of their establishment, such methods are not now defensible as methods of regulating the amount of indebtedness, because of the wide variations in assessments, the creation of special municipal corporations, the failure of assessed property values to keep pace with the price level during a period of rising prices, the differences in local needs as measured by the age and population of each community, and various social, economic, and geographic factors apart from property values. The author argues for a more flexible method of combined legislative and administrative control, such as exists in Indiana, Massachusetts, and New Jersey.

The Minnesota Year Book, 1930 (pp. 326), edited under the joint auspices of the League of Minnesota Municipalities and the Municipal Reference Bureau of the University of Minnesota, of which organizations Dr. Morris B. Lambie is the executive secretary and chief of

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staff respectively, is the most complete and carefully prepared work of its character known to the reviewer. Although intended especially for officials and citizens of the state of Minnesota, the volume contains a wealth of information and illustrative data for students of state government throughout the country. It should also furnish a model for other states to follow. As a part of the material which has been compiled are explanations of the organization and activities of the state, city, village, and county governments, together with charts, diagrams, and illustrations; tables and digests of statutes regarding taxes, assessed valuations, indebtedness, special assessments, increases in taxation; data on public utilities, including a description of various plants and distribution systems; election procedure; a directory of state and local officers, and a calendar of dates which are of importance in the conduct of the state government. Especially interesting is the section devoted to the regulation of business, professions, and occupations in Minnesota.

The Municipal Administration Service has issued a revised edition of Professor F. G. Crawford's excellent monograph on *The Administration of the Gasoline Tax in the United States* (pp. 35), which appeared originally in 1928. Changes in basic legislation are noted, and, in view of the growing feeling on the part of many cities that they are not obtaining their fair share of the revenues derived from the tax, the author has added a considerable amount of new material on the methods of distributing the tax among the various units of government. Professor Crawford's study shows that a gasoline tax is now found in every state and that in the aggregate this tax as a source of state revenue in 1929 bulked larger than the proceeds of the general property tax. The author warns against the danger of disturbing the smooth workings of the system by too large an increase in the rate of the tax.

The School of Citizenship and Public Affairs at Syracuse University has published a brochure entitled *Municipal Insurance Practices of New York Municipalities* (pp. 95), by Russell P. Drake. The survey covers forty-seven cities and villages and brings together in a helpful manner their practices and problems relating to fire insurance on public buildings, workmen's compensation insurance, liability insurance, and theft and burglary insurance. There is also general discussion, cul-

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minating in a number of practical suggestions and recommendations. Another monograph, published under the same auspices, and based on investigations in cities both in and outside of New York State, is *Crime Prevention as a Municipal Function* (pp. 66), by Hubert R. Gallagher. This study also eventuates in constructive suggestions.

The Constitution and Government of Texas, by Frank M. Stewart and Joseph L. Clark (D. C. Heath and Co., pp. 268), is decidedly above the average of text-books written on a particular state. The authors have not only discussed in detail, and largely from original sources, the constitutional history and government of Texas, but they have also made comparisons with other states and have emphasized general principles and tendencies in state government. Of special interest are the chapters on the development of the constitution, the amendment and revision of the constitution, the state executive, and the state administration.

The fourth and final volume of the late William Watts Folwell's excellent *History of Minnesota* (pp. xiii, 575) has been published by the Minnesota Historical Society. The volume consists largely of chapters devoted to social, economic, and educational development, but there is one chapter of particular value to students of state government and politics. It is entitled "The Will of the People," and treats of such subjects as the franchise, development of the election code, election procedure, the Australian ballot, the registration of voters, the growth of the primary system, absentee voting, and corrupt practices legislation.

Public Welfare Administration in Louisiana, by Elizabeth Wisner (University of Chicago Press, pp. 239), is the eleventh volume issued in Social Service Monographs, edited by the Graduate School of Social Service Administration at the University of Chicago. Like an earlier volume of the same nature by Dr. Margaret K. Strong, relating to Canada, Miss Wisner's book is of interest almost equally to the student of social welfare and the student of public administration. In the branch of governmental activity dealt with, Louisiana is not a typical state. Its administrative antecedents are Spanish and French as well as American; and it has been affected but slightly by movements for the reconstruction of social services which have made headway in other

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Southern states such as Virginia, North Carolina, and Alabama. As a matter of historical record, at all events, Miss Wisner's study gains in significance on this account.

The Racket and Tax Reform in Chicago, by Herbert D. Simpson (Institute for Economic Research, pp. 287), presents the results—often astonishing and always significant—of a four-year investigation of the tax situation in Chicago, brought down to include the reassessment ordered by the state tax commission in 1928, the relief program of the Citizens' Committee, and the Illinois legislation in the summer of 1930. Chicago's widely-advertised fiscal disorders of a few months ago furnish a dramatic background for one of the most thorough studies of a taxation system ever made in this country.

The proceedings of the Twelfth American Country Life Conference, held at Ames, Iowa, in 1929, have been published by the University of Chicago Press under the title *Rural Organization* (pp. ix, 186). There is a small section on government and taxation which includes brief papers on "Changes in State Legislation Affecting Local Government in Iowa," "Services Furnished to Farm People by Federal Departments," and "Equalization Problems in State Legislation."

FOREIGN AND COMPARATIVE GOVERNMENT

In his recent biography of *Lord Melbourne* (Macmillan, pp. 322), Mr. Bertram Newman, who has already written on such different characters as Edmund Burke and Cardinal Newman, now provides us with a very useful, readable, and timely volume on a character nearly as different from Burke and Newman as they were different from each other. Melbourne deserves well of a biographer, and Newman has done well by him in this clear, well-written, and entertaining as well as instructive volume. As so many of our now popular sex-historians and gossip-mongers have too abundantly proved, it would have been easy to do otherwise. Mr. Newman has avoided many obvious temptations to make his book more scandalous and less true, and he has provided us with an account of Melbourne and his times for which we may all be grateful. Despite his modest disclaimer of not attempting "to add to the knowledge of the period," and his obvious and acknowledged indebtedness to other writers, notably Halévy, he has summed up the considerable literature which has appeared on

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Melbourne's time since Torrens' revised *Life of Melbourne* was published, some forty years ago, and has produced a volume which may be—and it may be hoped will be—read with pleasure and profit by a great many people.—W. C. A.

American Precedents in Australian Federation, by Erling M. Hunt (Columbia University Press, pp. 286) is a useful sketch of the federation of Australia which pushes the work of C. D. Allin and of Quick and Garran farther along the trail of American precedents. The author has been less interested in trying to determine the psychological setting of the federation movement in Australia than in collecting references to American precedents as they stand in the debates of the series of constitutional conventions from 1891 to 1898. More use of the biographical material now available and of the cultural connections with the United States would have been interesting. Bryce's influence is hardly enough emphasized, perhaps because it is so well known. The book has really a wider scope than its title. It avoids the pitfall of trying to exaggerate the material suggested by its title and brings together in a competent fashion the main contributions which were made by Australians to their own constitution—showing that the adaptations from American precedents were far from being slavish in imitation.—W. Y. E.

Shadows and Realities of Government, by F. A. Bland (pp. x, 316), published in the series of economic, political, and social studies of the Workers' Educational Association of New South Wales (Sydney), is a study of the organization of the administrative agencies of government, with special reference to New South Wales. It deals with the recruiting, training, and organization of the public service, and gives a brief outline of the work assigned to the various departments in New South Wales. A chapter is devoted to Parliament and public service, and another to the Arbitration Court, or Public Service Board, with fifty pages on suggested reforms. The work is mainly descriptive, but also critical. In particular, it focuses attention on the incursion of administration into many new domains, with the accompanying rapid multiplication of commissions and independent departments removed from direct control of ministers and Parliament. The author shows the continuous interference of politics with administration and makes suggestions for eliminating the evils thereof, while retaining the

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advantage of a close alliance between public opinion and public policy. —S. P. L.

Must England Lose India?, by Lt. Col. Arthur Osborn, D.S.O. (Alfred A. Knopf, pp. vii, 280), is a frank and courageous attempt on the part of one who admits that he himself has sinned against India to bring to the attention of the British public what he conceives to be the fundamental causes of India's present discontents. In part, the book is one of the many answers to Miss Mayo's accusations, which the author holds to be of little weight and largely irrelevant as far as political issues are concerned. The main thread that runs through the book, however, is the attack on the British public schools as the main source of the "class-conscious superiority, physical force, and arrogant self-esteem" which the author regards as characteristic of the rulers of India. These schools, in his view, have produced a class of men, wooden-headed, unimaginative, intolerant, and reckless, who have made impossible the development of any equal and friendly coöperation between the British and the natives, not only of India, but of all the other colonies as well. The book, which is eminently readable, is illumined by a number of anecdotes calculated to bear out the author's contention that "the political outlook of the Englishman in India is always at least twenty years behind that of the men in the same position in England."—R. E.

Readers of *India's Political Crisis* (Johns Hopkins Press, pp. 190), by Professor William I. Hull, will find the book a very successful attempt to interpret in an unbiased, non-partisan manner the aspirations of various parties and other groups concerning India's future. In the main, the sponsors of the various well-known plans—complete independence, dominion status, etc.—are allowed to speak for themselves, and the volume becomes essentially a calendar and synopsis of a running debate which has kept the country astir since the National Congress faced its first resolution for independence some ten years ago.

It was a little difficult at first for Americans to understand why so balanced a document as the Simon Report met with such unanimity of disapproval in India. Mr. C. F. Andrews' *India and the Simon Report* (Macmillan Company, pp. 192), written from the author's long Indian experience and close friendship with Gandhi, shows the psycho-

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logical background of the Congress nationalist attitude. It is written with the frankly propagandist hope of persuading his English friends that only by conceding the full nationalist claims and by undergoing a change of heart and attitude toward the problem of racial equality can they hold India to loyalty to the British Commonwealth of Nations. Mr. Andrews is very little concerned with the economic aspects of this surrender.

The Carnegie Institution at Washington has published the third volume of the *Proceedings and Debates of the British Parliaments respecting North America, 1702-1727,* edited by Leo Francis Stock (pp. xxvi, 571). This volume covers the reigns of Anne and George I. During the War of the Austrian Succession, the state of trade and problems arising out of the war predominated in Parliament's attention to colonial matters. Such subjects as naval stores production, the convoy system, the Navigation Acts, and trading with the enemy came repeatedly within the purview of Parliament. After the war, much attention was given to the economic expansion of the empire, and much light is shed on the fisheries and the colonial trade, especially in tobacco and woolens. Probably three-fourths of the time given by Parliament to colonial matters was devoted to the general state of trade. Parliament manifested practically no independence and made no efforts to interfere with the crown's administration of the colonies. In most instances, the action taken by Parliament was suggested to it by the Board of Trade. There are included, also, in this volume the debates and proceedings of the Scottish and Irish parliaments concerning the American colonies. The work is provided with a good index. The footnotes are excellent and exhibit erudition and painstaking research. The introduction, however, is a little disappointing. The work is a distinct contribution to the history of the English colonies in America.—R. C. W.

Select Documents of British Colonial History, 1830-1860, edited by K. N. Bell and W. Morrell (Oxford University Press, pp. 1610), which covers the crucial period in the development of responsible government in the British colonies and the end of the old colonial system, is distinguished chiefly by an able chapter of biographical introduction that aptly sets the stage for the documentary material. The introductory notes and comments to the subsequent divisions are written with less epigrammatic brilliance but with great soundness of scholarship. By

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refusing to be tempted to include the more obvious documents easily available to the student elsewhere, the editors have enriched the volume with many selections that lend a nuance of difference from the cut and dried historical view of a character or of an official decision. By selecting a limited period and sticking to the policy of opening new documents to the ordinary student, the editors have made a real contribution.—W. Y. E.

The History of British Civilization (pp. xix, 1332), by Esme Wingfield-Stratford, published by Harcourt Brace and Company in two volumes two years ago, has now been issued in a one-volume edition. This magnificent work presents with rare eloquence and imagination a record of Britain's past, bridging time dramatically and bringing a fulsome yet unified picture to the modern reader. Nor does the title belie the content: the course of a civilization is depicted.

Germany in the Post-War Period, by Erich Koch-Weser (Dorrance, pp. 222), is a small book covering a larger subject than its title indicates. The author is a prominent German statesman and political leader of the Stresemann school who writes in the spirit of Locarno. It is a book that will be read with great sympathy and appreciation by all who pride themselves on a broad super-national view and who like to approach international relations from the world standpoint. Koch-Weser prefaces his discussion of the position of Germany with several chapters reviewing the policies of the major powers and evaluating such forces as nationalism, imperialism, and pacifism. The evolution of German policy from the time of Versailles to the Young Plan is a subject of dramatic interest in itself, and it loses nothing from the telling by a man so well informed and broadminded as the author of this book. Of greatest interest, however, is the second part, in which the problems of Eastern as against Western orientation, of Continental as against Anglo-Saxon policy, and of Pan-Europe are taken up. The reader will find throughout a depth of understanding and knowledge that is rarely to be discerned in ephemeral political literature. As an exposition of the policy represented by Stresemann and his followers, this little book can hardly be surpassed.—W. L. L.

The Recovery of Germany, by James W. Angell (Yale University Press, pp. 425), is the fruit of study and travel in Germany in the

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year 1928-29. The task of describing the changes in the economic life of a great nation over a decade is formidable; and it is obviously necessary to summarize secondary sources of information in the performance of it. The gratitude of the English-reading public is due to Professor Angell for having presented such an interesting summary, and for having sifted the material with the aid of that background of judgment derived from "company balance sheets and reports, personal observation, and . . . conversations with a fairly wide range of people in public and private economic life . . ." (p. 362). It is inevitable in such a work that the specialist in any particular phase will not be satisfied with the part dealing with his *Fach*. But it gives a glimpse of the valley which the helots will plough.—R. O.

Dr. Albert P. Pinkevitch's book, *The New Education in the Soviet Republic* (John Day and Co., pp. 403), translated by N. Perlmutter, merits attention as the only volume on the topic written by a Russian and available for American readers. Originally intended as a text for Russian university students, it has been somewhat revised and abridged in translation. It gives us not only an account of the educational system in the Soviet Republic, but also insight into the philosophy on which the system is based. Whether or not one agrees with the definitely Marxian point of view, or with the criticisms of bourgeois education, the book is worth reading. The Soviet government is carrying on an experiment of gigantic proportions with a thoroughness which cannot fail to interest both the student of education and the student of social problems in general.—R. O.

INTERNATIONAL LAW AND RELATIONS

The Soviets in World Affairs: A History of Relations Between the Soviet Union and the Rest of the World, by Louis Fischer (Jonathan Cape, two volumes, pp. 1-464, 465-892), is a diplomatic chronicle of issues between revolution and status quo, between socialistic-planned economy and capitalistic *laissez faire*—a conglomerate history of what Soviet and other national statesmen said, did, wrote, thought (or might have thought, had they thought) about each other and their respective policies, singly or in groups, during twelve troublesome years. It could very well pass as a ticker-tape record of recurrent subjects as they came up in the collegium of the Commissariat of Foreign Affairs since 1917, a colossal mass of official statements and opinions, plus interpella-

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tions, historical summaries, interpretations, mind-reading feats, and romantic assumptions by Mr. Fischer. Continuity is there—by reason of the unbroken thread of time. Students whose previous knowledge permits them to discriminate should find this a valuable source book. Certain of the "revelations" are not new. There is, nevertheless, an abundance of fresh material, doubly welcome now as economic depression brings to focus the issues between the two conflicting systems. There are mechanical defects. References to sources appear only in footnotes; the customary critical bibliography is lacking. The index is serviceable to readers who know the field. But the table of contents serves only to exasperate. Nondescript chapter headings such as "Bright Rays in France," or "Dark Clouds over London" bewilder rather than guide one to the numerous and important sub-titles of the text. The introduction would indicate that little is left to be done. Mr. Fischer admits that he has bagged as sources nearly all the important people, documents, diaries, and other mysteries of the revolution denied to the average student of the Russian "enigma." From this mass reproduction a research student might extract a broad, topical outline of Soviet foreign relations, replete with Communist ideology, but minus the tone quality of polemic omniscience with which Mr. Fischer offends objective scholarship.—B. C. H.

The Path to Peace, by Nicholas Murray Butler (Scribner's, pp. xiii, 320), dedicated to Aristide Briand, brings together a score of essays and addresses of President Butler on peace and its making in the period from 1924 to 1930. Two of these are printed in French, being French versions of speeches made by the author in Paris, and one is printed both in English and in German, being the address delivered by Dr. Butler before the Reichstag in 1930. The volume testifies to how much the author has done to interpret the United States to Europe and Europe to the United States, and to the share he had in preparing the state of public mind here and abroad for the Peace Pact and its spirit. It further shows that a zealous apostle of peace though President Butler may be, he never forgets the realities of the world nor tends to minimize the effort that is needed to mould world society into a peacefully organized society. With deep thinking and the experience of history, he points out that it is going to test statesmanship in the next twenty-five or fifty years to deal with the minority problems in Europe; he does not hesitate to declare his conviction that the treaty

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of Versailles created many problems of boundaries which must sooner or later be settled; and he does not mince his words in telling us that the greatest danger of international friction and conflict in the present day lies in the attempt to satisfy the economic wants of nations. What Dr. Butler believes is that all these problems need not be solved with the "pestiferous barbarism" of a bygone age and with involving the world in a new catastrophe which does not really solve anything, but by a determined "will to peace" and "habit of peace." Many people feel that nationalism and internationalism involve a conflict of loyalties to a country and to the world. Dr. Butler would seem to find no such conflict, as there is only one loyalty needed—to one's own country—provided this is an enlightened loyalty.—S. P. L.

Students of diplomatic history will find much illuminating material in the fourth volume of the British *History of the Great War, Naval Operations* (Longmans, pp. xi, 412, with maps and diagrams in separate case). It is clear that the Committee of Imperial Defense could not have made a happier choice to carry on the work of the late Sir Julian Corbett, for Sir Henry Newbolt's style is worthy of his great subject. After analyzing the results of the battle of Jutland, the author deals with "a new kind of war, a naval war on a vast scale, but conducted mainly by blockade and counter-blockade, both unexampled in kind; and with a moral struggle in which the vital conflict at sea was inseparably interwoven with a conflict of imponderable forces, acting by intrigues and negotiations, national and international." He therefore goes beyond the narrative of submarine warfare and desperate counter measures to disentangle the threads of Anglo-French policy with regard to Greece, and to explain, in fifty stirring pages, "the true climax of the war," the German decision to play the last card, unrestricted submarine warfare. The volume closes with the almost desperate situation at the end of April, 1917—that black month in which German submarines destroyed 881,027 tons of shipping at the cost of two UC-boats. "Admiral von Holtzendorff's prophecy of victory was apparently verging toward fulfillment, and only a change in our system of defense could turn the tide."—J. P. B.

The Coming of the War, 1914, by Bernadotte E. Schmitt (Scribner's, two volumes, pp. 539, 515), is a most detailed and scholarly analysis of the evidence bearing on the famous crisis of 1914. Professor

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Schmitt has examined all the material on the subject and follows the story through to the entrance into the war of even the minor powers. Two introductory chapters deal with the European states system in the years preceding 1914 and with the evolution of the Near Eastern question in the pre-war period. There is a very complete study of the involved problems raised by the assassination of the Archduke, and of the Serbian policy in relation to the plot. In discussing the attitude of the major powers, Schmitt differs widely from the so-called revisionist writers. He regards the Austrian policy with considerable understanding, but devotes a large part of his book to an attempt to make out a case against the Germans. He holds that the German government was fully aware of the Austrian plans when it promised support and that the German action was one of encouragement rather than of restraint. An effort is made to explain the questionable aspects of the French policy and to minimize the importance of the Russian mobilization. The English statesmen come off best in the general estimate. The book is heavily documented throughout and very closely reasoned, but many objections can be raised to the form of argument and to the conclusions derived from the evidence. As an attempt to present a view widely at variance with that of men like Fay, the book deserves the careful attention of all students of European diplomacy.—W. L. L.

The World Crisis of 1914-1918, by Elie Halévy, is a booklet of fifty-seven pages containing the Rhodes Memorial Lectures delivered in 1929 at Oxford. The first lecture defines the forces which at the beginning of the century made for revolution; the second defines the forces which made for war; the concluding one attempts to interpret the causes of the world crisis in terms of these two forces. Though coming from a distinguished historian, this latest attempt to lay down a broad interpretation of the forces underlying the world crisis of 1914-1918 is distinctly a generalization, perhaps in tone with the special nature of the occasion. The object of these lectures, Professor Halévy points out, is not to give a history of the World War, but rather to suggest a new way of approaching its history through knowledge of the action and interaction of the forces making for revolution and for war.—M. W. R.

The sphere covered by the Berkshire Studies in European History (Henry Holt and Co.) has been enlarged by the addition of David Ed-

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ward Owen's *Imperialism and Nationalism in the Far East* (pp. xii, 128) and Halford Lancaster Hoskins' *European Imperialism in Africa* (pp. x, 118). Since this series has hitherto confined itself to Europe, with the exception of one study of the British Empire, the present contributions to it represent something of a departure from its traditions. In both the present volumes, however, the European influence is strongly stressed, especially in the case of the work on Africa, which does not attempt to penetrate far beyond the external diplomatic history of the partition of that continent by the European Powers. Mr. Owen's study delves somewhat more deeply into the internal history and conditions of China and Japan. As in the other volumes of the series, the presentation of the subject matter is straightforward and conventional, and no effort is made to embody original research or to sustain any new thesis. Both are equipped with useful brief bibliographies.

Essai de Droit Pénal International—L'Affaire du Lotus, by G. Canonne (Librairie du Recueil Sirey, Paris, pp. 345), is Volume IV in the series of the Bibliothèque de l'Institut de Criminologie et des Sciences Pénales de Toulouse. It deals with the juridical problems arising from the Lotus case and analyzes, in particular, the decision of the Permanent Court of International Justice handed down in this Franco-Turkish dispute. The study has a character of admirable comprehensiveness, although at times it transcends its subject. The discussion is serious and of great clarity. Its chief merit lies in its use of the Lotus case as a test of the extraterritorial theories of criminal law in the world community of today.

A Collection of Nationality Laws of Various Countries as Contained in Constitutions, Statutes, and Treaties (pp. 776), by Richard W. Flournoy, Jr., and Manley O. Hudson, has been published by the American branch of the Oxford University Press. Part I deals with the provisions contained in the constitutions and statutes of the different states throughout the world. Part II contains a collection of the treaties, conventions, and other agreements concerning nationality and military service. The work is arranged according to states, the constitutional and statutory provisions of each country being prefaced by a brief editorial note and bibliography. There is also a very useful analytical index.

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Mexico and her Foreign Creditors (Columbia University Press, pp. 449), by Edgar Turlington, is a dispassionate and exceptionally interesting study of the experience of the Mexican government in making loans abroad. It is a fine example of a coöperative undertaking by a group especially qualified by training and experience for such a task. It deals with a subject, too, upon which, through lack of any authoritative exposition, there has been a large amount of discussion having little relation to fact. No more serious work has been attempted recently in setting out the relation of the foreign debt of a Latin American state to the national economy and to its international relations. Its conclusions will do much to dispel the widely held opinion that creditors have always demanded usurious terms from Latin American borrowers, and also that the latter have uniformly treated with scant consideration their obligation to meet the terms of loan contracts. The volume is a decidedly worth-while contribution to our studies of international finance and diplomatic history.—C. L. J.

Students of international relations will find in Christina Phelps' *The Anglo-American Peace Movement in the Mid-Nineteenth Century* (Columbia University Press, pp. 230) a convenient historical sketch of earlier peace societies, plans for a congress of nations, movements to codify international law, arbitration and disarmament movements, and related developments in the period 1835-53. An interesting feature is a parallel column comparison of an American plan for a congress of nations dating from 1840 and the scheme of international organization embodied in the present League of Nations.

La Juridiction de la Cour Permanente de Justice Internationale dans le Système des Mandats, by Nathan Feinberg (Paris, Rousseau et C^{ie}, pp. 238), is a clear and reasonably well-written analysis of the relationship of the World Court to all phases of the mandate system. Most of the author's conclusions, which are temperate but optimistic, are derived from the implications of the Mavrommatis case.

POLITICAL THEORY AND MISCELLANEOUS

Das Gesetz der Macht (Wien: Julius Springer), is the latest contribution of Friedrich Wieser to social philosophy. The purpose of the work is to show the law of the development of *Macht* and how the rigid law of external *Macht,* in the course of time, has changed into

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the moderate laws of law and ethics (p. iii). Following Spinoza, Wieser defines social (*gesellschaftliche*) *Macht* as the control over individuals (p. 5). But Wieser makes a distinction between inner *Macht* and outer or external *Macht*. Inner *Macht* is simply the control over individuals, such as legal power, moral power, powers of art and science, powers of ideals, etc.; while outer *Macht* is the control over individuals by the possession of the external *Machtmittel*, "power-means." Such external means may be arms or other physical forces. According to Wieser, *Macht* is derived from success (p. 23). *Macht* and success always go hand in hand. In this respect, Wieser's theory is similar to the old doctrine of certain German writers, particularly of Nietzsche, that might is right. With Wieser, *Macht* is success. His only point of departure from the old German doctrine is that *Macht* means not only might but also moral power, the powers of ideas, etc., (inner *Macht*). Wieser also maintains that all human history is a history of the formation of *Macht*. A theory of history is a theory of *Macht* formations (p. 206). This is, indeed, a *Macht* interpretation of history, which was also the doctrine of Eugen Dühring; only, Dühring lays more emphasis upon *Gewalt* (force), while Wieser has a broad concept of *Macht*. Dühring regards *Gewalt* as an historical evil, while Wieser recognizes *Macht* as an historical necessity. The course of *Macht*, says Wieser, begins with the work of violent force (*rohen Gewalt*) and ends in the peaceful symbiosis of the contradictory but balanced *Macht* (p. 534). The law of *Macht*, he repeats, begins with the "force-form" *(Zwangsform)*, which gradually develops into the legal form *(Rechtsform)*. The latter, in turn, develops into inner legal power *(innere Rechtsmacht)*. This is, according to Wieser, "the eternal way of history" (p. 546). Such is the law of *Macht*. In terms of this law, Wieser interprets the whole history of mankind. —S. H. M. C.

It is difficult to see to what type of reader R. G. Hawtrey's *Economic Aspects of Sovereignty* (Longmans, Green and Co., pp. 162) can hope to appeal. It is too heavy in style and somewhat too didactic for the general reader, and far too summary and superficial for either the economist or the political scientist. The general thesis of the work, which is composed of a course of lectures delivered at the Lowell Institute in 1929, is that political questions are in the main substantially economic, that governments are continually involved in economic is-

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sues, and that from these issues arise the conflicts which, in a world which has not advanced beyond international anarchy, can be solved only by an appeal to arms. The treatment of this inexhaustibly rich field is, however, trite and commonplace, and marred by the dogmatic assertion of a succession of half-truths. All too frequently, actual misstatements are made, as, for instance, that "war between any two states wipes out all treaties and agreements between them," or that the real bond between Great Britain and the Dominions is that "they are adherents of one and the same sovereign power," although sovereignty is later stated to mean the possession of absolute dominion within the territorial jurisdiction of the state.—R. E.

Civil War Prisons; A Study in War Psychology, by William Best Hesseltine (Ohio State University Press, pp. 290), is a very scholarly study of the facts and the legends about the treatment of prisoners on both sides during the American Civil War. The monograph shows a praiseworthy effort toward the scientific viewpoint which would view an incident as a particular case of an oft-repeated social situation. If the book leaves the impression that most of the scientific psychology is in the title of some chapters and in the sub-title of the book, due allowance must be made for the thoroughly conventional atmosphere in which Professor Hesseltine received his historical training. That he was able to achieve anything like a comparative perspective is very much to his credit. Legends about prisoners abound in war, and the books about war are legion. Sometimes more emphasis is put on enemy atrocities than usual. Sometimes the study of the facts discloses more substantial bases for atrocity stories than usual. No doubt there are general circumstances in which cruelty is frequent and atrocity tales abound. If such predisposing circumstances are to be found, there must be an analysis of the atrocity problem which guides historical research to the choice of cases which have general significance. This book shows no such rigor of analysis, but it displays a healthy sense of discomfort with the routine accumulation of more lumber with which to build an unspecified house. After all, the house may require bricks. —H. D. L.

Although Mr. J. B. Condliffe's *New Zealand in the Making* (University of Chicago Press, pp. 524) bears the sub-title "A Survey of Economic and Social Development," the book contains many chapters

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that will interest students of government. Among these may be mentioned "The Origins of State Socialism," "The Economic Functions of Government," "State Regulation of Wages," "Imperialism and Foreign Affairs," and "An Experiment in Democracy." The author —formerly professor of economics in Canterbury College, and at present research secretary of the Institute of Pacific Relations—is a New Zealander of the highest competence, and his book proves to be one of the best interpretations of governmental development in a virgin land, as influenced by social and economic factors, that has ever been produced. The curious weakness of the Dominion's educational system is dwelt upon as a cause of "the very evident intellectual lag which in the recent period of prosperity has turned its people from the paths of experiment into those of satisfied conservatism and even mediocrity."

The Labor Philosophy of Samuel Gompers (pp. 190) is written by Louis S. Reed and published by the Columbia University Press as one of the studies in its series on history, economics, and public law. The author develops his topic with admirable clarity and conciseness and presents a work of decided interest and value to those concerned with the problems of organized labor. Gompers' theories were of the simplest, and he expounded and applied them over a long life. Hence there are no great revelations in Dr. Reed's volume. The author points out that "Gompers came to the labor movement at the beginning of an epoch. He helped discover the politics that were right and good for that epoch, and led in building the movement upon these policies and principles. The movement passed into a new epoch. But Gompers never recognized that the new epoch had arrived.—E. P. H.

The organized pacifists have fought a long war toward the end of peace and, as set forth in *The American Peace Crusade 1815-1860* (Duke University Press, pp. x, 250), by Merle Eugene Curti, their work has not been entirely in vain. Continuing endowed agencies for the dissemination of peace propaganda have been established, brilliant arguments against war written, and practical plans for peace evolved. Of the early peace crusade, the author admits it is "probably true that the organized work against war failed to exert any marked influence on governments, that it had little if any influence either in modifying treaties or in averting conflicts." The expert pacifist propagandist of

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the present time is seemingly more sophisticated and more skilled in publicity technique than the pioneers of the movement, who were thoroughly suffused with a zeal for general human reform. Their concern was in organizing good-will and preaching brotherhood; the contemporary peacemakers concentrate their attention more directly upon legislators and diplomats. Mr. Curti's volume is a welcome contribution to an aspect of American history that has heretofore received scant attention.

The polemic literature on the prohibition question is added to by three recent volumes: *An Indictment of Prohibition,* by Joseph S. Auerbach (Harper and Brothers, pp. 94); *Is Amendment Eighteen Treason?,* by Joshua Grozier (The World Press, pp. ix, 148); and *What Rights Are Left?,* by Henry Alan Johnston (The Macmillan Company, pp. x, 177). Mr. Auerbach, with earnestness, tempered by weariness, critically discusses the existent prohibition laws and suggests a return to state control. The savoir-faire of this volume contrasts greatly with the rather fantastic theme of Mr. Grozier, who attempts to prove that Congress transgressed its powers to the point of "unrepublican degeneracy" in passing the Eighteenth Amendment. Mr. Johnston, in the light of federal and state statutes and court decisions, attempts to inform the reader as to just how far prohibition prohibits. This volume may prove a solace to the legalistically-minded wet possessed of a thirst and a conscience.—E. P. H.

In *Toward Civilization* (pp. vii, 307), published by Longmans, Green and Co. and edited by Charles A. Beard, modern civilization is considered from a point of view quite different from that assumed in *Whither Mankind.* In the present volume, Dr. Beard marshalls an array of engineers and scientists who take up the cudgels in defense of the machine age and answer the criticism made by the specialists in the humanities. The volume includes discussions of power, transportation, agriculture, art, and leisure, considered in the light of the new problems and values introduced by the expansion of industry and the advances in technology.—E. P. H.

The National Industrial Conference Board presents an enlarged and revised edition of *Public Regulation of Competitive Practices* (pp. ix, 32), a study which first appeared in 1925. Governmental policy in the

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surveillance of business practices is discussed in detail, the present state of the law is indicated, and the federal administrative agencies affected are critically analyzed. A chapter on the Trade Practice Conference and additional material upon important developments in the Federal Trade Commission make this edition very timely.—E. P. H.

D. Appleton and Co. has published a second edition of H. L. Lutz's *Public Finance* (pp. xv, 759). Not only has the author brought the subject matter down to date, but two new chapters have been added, on the poll tax and on characteristics and tendencies in American taxation. The work is of special help to students of government because of the emphasis on tax administration, the property tax, state income taxes, the growth of public expenditures, public ownership, including such experiments as state banks, warehouses, and mills in North Dakota and the ownership of street railways in San Francisco, Seattle, and Detroit, and the growth of local debts and attempts to restrict the same.

American tax literature has lately been enriched by the publication of Mr. Carl S. Shoup's *The Sales Tax in France* (Columbia University Press, pp. 369). The study on which the volume is based was remarkably thorough and productive, and while a general sales tax for federal purposes is not the live issue in this country that it was shortly after the war, growing interest in the tax in connection with state and local finance will give the volume a high degree of practical, as well as scholarly, importance.

Students of government who are looking for a source of information which will give them a clearer understanding of certain technical matters having to do with procedure in criminal cases will find Edwin R. Keedy's *Cases on Administration of Criminal Law* (Bobbs-Merrill Co., pp. xx, 586) of definite assistance. There are extracts from legal treatises and court decisions on such subjects as investigations by grand juries, indictments, interstate rendition of fugitives from justice, jury trials, the conduct of the prosecuting attorney, methods of review on behalf of the accused, and the scope and effect of executive clemency. Over two hundred cases are reported.

In *Foreign News in American Morning Newspapers; A Study in Public Opinion* (Columbia University Press, pp. 122), Professor Julian

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L. Woodward has made an interesting inquiry into the possible applications of a "statistical and semi-behavioristic approach" to the study of public opinion. He considers the validity of the newspaper content index as still open to question at the end of what is essentially a methodological study, but believes that his results create a presumption in its favor. A suggested list of topics for further research in the field should serve as a challenge to other inquirers.

In *The Church of England and Social Reform Since 1854* (Columbia University Press, pp. 341), Mr. Donald O. Wagner has sought, not to rehabilitate the Church as an agency of reform or to palliate its tendency to put its worst foot forward, but merely to state its position on matters such as temperance, education, housing, factory legislation, and trade unionism, "whether that position happens to have been admirable or the reverse." Students of popular and group attitudes toward the expansion of governmental functions will find the volume suggestive.

Professor Wilson Gee's *The Place of Agriculture in American Life* (Macmillan, pp. 217) is the latest addition to the World Today Bookshelf and presents a readable and authoritative bird's-eye view of American agriculture and its pressing problems at the present day. A chapter on the farmer in politics lightly sketches the rise and decline of the Granger movement, the Farmers' Alliance, the Populist party, the Non-Partisan League, and the Farmer-Labor party. The book is, however, chiefly of economic and sociological interest.

Dr. Leo Pasvolsky's *Bulgaria's Economic Position* (The Brookings Institution, pp. 409) is a companion volume to the same author's *Economic Nationalism of the Danubian States*, dealing with Austria, Hungary, Czechoslovakia, Jugoslavia, and Rumania. The volume will have even greater interest for students of international affairs than the earlier one, for the reason that Bulgaria has availed herself more largely than any other country of the good offices of the League of Nations in her effort to rehabilitate her economic life. An appendix consisting of significant documents fills nearly a hundred pages.

In the first volume of his *Histoire Constitutionnelle de l'Union Amérique*, entitled *La Naissance du Féderalisme aux États-Unis*

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(Recueil Sirey, pp. 289), Professor Jacques Lambert, of the University of Lyon, retells the oft-told tale of American constitutional and political history from the founding of the seaboard colonies to the close of the War of 1812. The book is of respectable quality, but has no special claim to distinction, except perhaps as it elucidates early American constitutional experience in terms easily comprehensible by European readers.

Mark Sullivan, in *Pre-War America* (Scribner's, pp. xvii, 586) adds another volume to his *Our Times*. The present book contains much of interest to the student of politics and includes a variety of incidents unnoticed by the orthodox historian. The resulting *potpourri* is well blended and seasoned, the story of the Roosevelt administration being particularly noteworthy.

Robert E. Riegel presents the epic of westward expansion in *America Moves West* (pp. x, 595), published by Henry Holt and Company. The subject is treated with a verve that seems eminently fitting and enlivened with song and story of indigenous origin. The description of life and manners, as well as the historical sequence of events, makes for a vivid book, informative and interesting.

America Looks Abroad, by Paul M. Mazur (Viking Press, pp. 299), is a work in popular style on the relation between America's economic problems and the internal economic developments of Europe. The author touches upon a wide range of subjects, among them being the loss of financial leadership and foreign markets by European states and the gradual growth of what the author calls American economic supremacy, the tariff question, mass production, and consumption. The international economic difficulties resulting from the war will be settled only, the author says, when Europe has become industrially-minded and America internationally-minded.—M. W. R.

The Thomas Y. Crowell Company has published a revised edition of Gordon S. Watkins' *Labor Problems* (pp. xvi, 726), which was originally issued in 1922. The chapters of especial interest to students of government are those on hours of labor, child labor, immigration and American labor, socialism, adjustment of industrial disputes, and international control of labor relations.

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RECENT PUBLICATIONS OF POLITICAL INTEREST
BOOKS AND PERIODICALS

CHARLES M. KNEIER AND CHARLES S. HYNEMAN
University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

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